

立法會

# *Legislative Council*

LC Paper No. CB(2) 1095/04-05

Ref : CB2/H/5/04

## **House Committee of the Legislative Council**

### **Minutes of the 19th meeting held in the Legislative Council Chamber at 2:30 pm on Friday, 11 March 2005**

#### **Members present :**

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)  
Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Dr Hon LUI Ming-wah, JP  
Hon Margaret NG  
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 Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Hon WONG Yung-kan, JP  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon LAU Chin-shek, JP  
Hon LAU Kong-wah, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
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 Vincent FANG Kang, JP  
Hon WONG Kwok-hing, MH



Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Council Secretary (2)5
Mrs Betty LEUNG	Chief Council Secretary (3)1
Ms Connie FUNG	Assistant Legal Adviser 3
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Lolita SHEK	Senior Council Secretary (2)7

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**I. Confirmation of the minutes of the 18th meeting held on 4 March 2005**  
(*LC Paper No. CB(2) 1026/04-05*)

The minutes were confirmed.

**II. Matters arising**

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

2. The Chairman said that there was nothing special to report.

**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) Statute Law (Miscellaneous Provisions) Bill 2005**  
(*LC Paper No. LS 37/04-05*)

3. The Legal Adviser explained that the Bill sought to make miscellaneous amendments to improve, clarify and update various ordinances.

4. Ms Margaret NG said that the Administration had briefed the Panel on Administration of Justice and Legal Services on the legislative proposals in the Bill at its meeting on 14 December 2004, and members had raised concerns about certain issues. Ms NG added that a Bills Committee should be set up to scrutinise the Bill.

5. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Ms Margaret NG, Ms Miriam LAU and Ms Audrey EU.

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

**(ii) Aviation Security (Amendment) Bill 2005**  
*(LC Paper No. LS 36/04-05)*

7. The Chairman explained that the Bill mainly sought to impose criminal sanctions against unruly or disruptive behaviour committed by passengers on board civil aircraft.

8. Ms Margaret NG said that a Bills Committee should be formed as criminal sanctions were proposed in the Bill.

9. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Ms Margaret NG, Mr James TO, Mr Howard YOUNG, Mr LAU Kong-wah, Mr Tommy CHEUNG, Ms Audrey EU and Mr Albert CHENG.

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

**(b) Legal Service Division report on subsidiary legislation gazetted on 4 March 2005 and tabled in Council on 9 March 2005**  
*(LC Paper No. LS 40/04-05)*

11. The Legal Adviser said that seven items of subsidiary legislation were gazetted on 4 March 2005, and tabled in the Legislative Council (LegCo) on 9 March 2005.

12. Members did not raise any queries on the seven items of subsidiary legislation.

13. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 6 April 2005, or 27 April 2005 if extended by resolution.

14. As regards the United Nations Sanctions (Democratic Republic of the Congo) Regulation, the Legal Adviser said that the Regulation, which was made under the United Nations Sanctions Ordinance (Cap. 537), was not subject to scrutiny of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). Nevertheless, the Regulation came within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, and could be referred to the Subcommittee for further study.

15. The Chairman proposed that the Regulation be referred to the Subcommittee for study. Members agreed.

#### **IV. Report of Bills Committees and subcommittees**

##### **Report of the Bills Committee on Vocational Training Council (Amendment) Bill 2004**

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*(LC Paper No. CB(2) 1031/04-05)*

16. Ir Dr Raymond HO, Chairman of the Bills Committee, said that the Bills Committee supported the policy intent of the provision of extra-territorial activities by the Vocational Training Council (VTC). However, members had expressed various concerns about the job security and terms of service of existing staff, and also the accounting and tax arrangements in connection with the operation of extra-territorial activities by VTC.

17. Ir Dr HO further said that the Administration had agreed to move Committee Stage amendments (CSAs) to address members' concerns. Ir Dr HO added that the Bills Committee supported the resumption of the Second Reading debate on the Bill on 6 April 2005, and the CSAs to be moved by the Administration.

18. The Chairman reminded Members that the deadline for giving notice of CSAs was Wednesday, 23 March 2005.

#### **V. Position on Bills Committees/subcommittees**

*(LC Paper No. CB(2) 1023/04-05)*

19. The Chairman said that there were eight Bills Committees, including the Bills Committee on Statue Law (Miscellaneous Provisions) 2004 and Bills Committee on Aviation Security (Amendment) Bill 2005 formed under agenda item III(a) above, and six subcommittees in action.

#### **VI. Proposal to request the Administration to respond to speculation about the resignation of the Chief Executive**

*(Letter dated 8 March 2005 from Hon LEE Wing-tat to the Chairman of the House Committee (LC Paper No. CB(2) 1041/04-05(01))*

20. Mr LEE Wing-tat said that the Chief Executive (CE) had announced his resignation at a press conference on 10 March 2005. However, the Administration had still not informed LegCo and the public about the arrangements following CE's resignation, such as when the election of the

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new CE would be held, and whether there was sufficient time for making the arrangements. Mr LEE further said that LegCo was an important constitutional body, but the Administration had not briefed LegCo on the resignation of CE before briefing the media. He considered that the position of LegCo had been undermined.

21. Mr LEE suggested that the House Committee should hold a special meeting as soon as possible to discuss CE's resignation and related arrangements, and that CE, CS, the Secretary for Justice (SJ) and Secretary for Constitutional Affairs (SCA) should be invited to attend. Mr LEE further said that the subject of CE's resignation and related arrangements should also be debated at a Council meeting. The President, however, had refused his earlier request for a special Council meeting to be convened on 11 March 2005 for the purpose. Mr LEE proposed that an adjournment debate should be held under Rule 16 of the Rules of Procedure (RoP) at the next Council meeting on 16 March 2005, so that Members' views and the Administration's reply could be recorded in the official proceedings of the Council. He hoped that the House Committee would support his proposal.

22. Mr LEE added that he had no strong views as to whether the motion should be moved under Rule 16(2) or Rule 16(4) of RoP. However, if the motion was to be moved under Rule 16(4), he would like to seek the House Committee's support to recommend to the President that the duration of the debate should be longer than one hour.

23. The Chairman said that the Council meeting on 16 March 2005 would need to deal with the unfinished business on the Agenda of the Council meeting of 9 March 2005, in addition to the Appropriation Bill and the proposed Vote on Account Resolution.

24. Mr Albert HO, Mr Ronny TONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG and Ms Emily LAU considered that CE's resignation was a matter of urgency. The relevant government officials should be requested to brief Members at a special House Committee meeting, and that a motion debate on the ensuing arrangements should be held at the Council meeting on 16 March 2005.

25. Mr Albert HO said that over the past 10 days, there had been a lot of discussions within the community about CE's resignation and the related arrangements, but LegCo had not had the opportunity to debate the subject so far. Mr HO further said that a Member's motion debate could be held instead of an adjournment debate at the Council meeting on 16 March 2005, and the speaking time limit for the debate should be 15 minutes. Mr HO added that CE should be invited to reply at the debate, but if his resignation had already taken effect by then, Acting CE should attend the debate.

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26. Mr Ronny TONG said that according to Article 43 of the Basic Law, CE was accountable to the Central People's Government and the Hong Kong Special Administrative Region (HKSAR). Mr TONG further said that Article 64 of the Basic Law stipulated that the HKSAR Government was accountable to LegCo. The intense speculation about CE's resignation had caused much uncertainty and anxiety in the community. However, previous requests made by some Members for holding debates on the subject had been refused by the President. Mr TONG considered that CE had the responsibility to brief Members on his resignation, including the sequence of events leading to his resignation, details of the discussions with the Central People's Government on his resignation, and related arrangements. As CS would likely be appointed as Acting CE in the next few days, he should also meet with Members so that the public would have a complete picture of the issues related to CE's resignation.

27. Mr TONG further said that the resignation of CE before completion of his full term of office was unprecedented, and the ensuing arrangements to be made would become constitutional conventions. The public would be disappointed if LegCo failed to discharge its constitutional duty to ensure that proper arrangements were made to fill the vacancy in the office of CE.

28. Mr TONG added that a special House Committee meeting should be held on 14 March 2005, and that CE, CS, SJ, the Financial Secretary (FS) and SCA should be invited to brief Members on CE's resignation and the related arrangements. This would enable Members to obtain more information before the debate on the subject at the Council meeting on 16 March 2005.

29. Ms Margaret NG supported Mr Ronny TONG's suggestion. Ms NG added that a CE's Question and Answer Session could be held under Rule 8 of RoP on 14 March 2005, in addition to the adjournment debate under Rule 16(2) on 16 March 2005. If a Question and Answer Session could not be arranged for 14 March 2005, a special House Committee meeting should be held instead.

30. Mr LEUNG Kwok-hung said that CE was accountable to LegCo, as he was the head of the HKSAR Government. LegCo should exercise the powers conferred on it under Article 73 of the Basic Law and request CE to brief Members on his resignation and the related arrangements, before his resignation was accepted by the Central People's Government. Mr LEUNG considered that it was LegCo's responsibility to allow CE an opportunity to give an account of his resignation before he left the office of CE.

31. Mr LEUNG Yiu-chung said that there was uncertainty and anxiety in the community in the past one to two weeks, as the Administration had not

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responded to the intense speculation about CE's resignation. Mr LEUNG expressed regret that CE had failed to keep his promise that the Administration would maintain good relationship with LegCo, as CE had only briefed the Executive Council and not LegCo on his resignation, before holding the media briefing on 10 March 2005. Mr LEUNG further said that he had no strong views as to which forum should be used, as long as the Administration would give a full account of CE's resignation and the related arrangements as soon as possible.

32. Dr Fernando CHEUNG said that CE should be accountable to HKSAR and should brief LegCo on his resignation and related arrangements. Dr CHEUNG further said that the President had refused the requests made by some Members to hold an adjournment debate. He expressed regret that there was no involvement of the public in such an important matter. He added that to safeguard the dignity of LegCo, Members should request CE to give a briefing on the matter, before the debate at the Council meeting on 16 March 2005.

33. Dr YEUNG Sum suggested that, to enable Members to freely express their views, a motion on the subject couched in neutral terms should be moved by the Chairman of the House Committee at the Council meeting on 16 March 2005. Dr YEUNG considered that with the support of the House Committee, the President would likely agree to dispense with the notice required for moving the motion.

34. Ms Emily LAU expressed regret that CE had not briefed LegCo on his resignation, and this was disrespectful to LegCo. Ms LAU considered that a special meeting of the House Committee should be held on Monday, 14 March 2005, and the Administration should be invited to brief Members on the arrangements to be made following CE's resignation. As regards the moving of a motion on the subject for debate at the Council meeting on 16 March 2005, Ms LAU said that she was inclined to support that the motion be moved by the Chairman of the House Committee.

35. Mr LAU Kong-wah said that it was not appropriate for Members to comment on the President's rulings at this meeting. He personally agreed with the President that there was no urgency to hold a debate in Council, as CE's resignation had not yet been confirmed at that time. As CE had now announced his resignation, he supported Mr LEE Wing-tat's proposal of inviting the Administration to brief Members on the ensuing arrangements at a special meeting of the House Committee. This would enable Members to obtain more information before the debate on the subject at a Council meeting. Mr LAU further said that the meeting and debate should focus on the ensuing arrangements and not CE's resignation. He supported the suggestion that the motion should be couched in neutral terms, and the debate on the motion



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should be held after the delivery of the Budget speech by FS at the Council meeting on 16 March 2005.

36. The Chairman said that the special meeting of the House Committee could be held on Tuesday, 15 March 2005, from 4:30 pm to 6:30 pm. She added that a number of committee meetings had been scheduled to be held on Monday, 14 March 2005.

37. Ms Margaret NG asked whether the committee meetings scheduled for 14 March 2005 could be postponed, so that the time slots could be released for holding the special meeting of the House Committee. Ms NG said that CE's resignation and the related arrangements were very important matters, which should be accorded priority for discussion by LegCo.

38. Dr YEUNG Sum said that it would be difficult to postpone the meeting of the Panel on Education scheduled for the afternoon of 14 March 2005, as many deputations had been invited to the meeting.

39. Mr Fred LI, Chairman of the Panel on Food Safety and Environmental Hygiene (FSEH Panel), said that the joint meeting of the FSEH Panel and Panel on Health Services scheduled to be held at 8:30 am on 14 March 2005 could not be postponed, as the Secretary for Health, Welfare and Food would announce the implementation of some important health measures at that meeting. Mr LI supported holding the special meeting of the House Committee on 15 March 2005 at 4:30 pm to avoid disruption to other committee meetings. He added that holding the special meeting one day later would not make much difference.

40. Mr LAU Kong-wah and Mr James TIEN supported the suggestion that the special meeting should be held on Tuesday, 15 March 2005, at 4:30 pm.

41. Dr Fernando CHEUNG, Deputy Chairman of the Panel on Welfare Services, said that the meeting of the Panel to be held on 14 March 2005 from 11:30 am to 12:45 pm could be re-scheduled, so as to release the time slot for the special meeting of the House Committee.

42. The Chairman proposed that the special meeting be held on Tuesday, 15 March 2005, from 4:30 pm to 6:30 pm. Members agreed.

43. The Chairman said that CE, CS, SJ and SCA would be invited to attend the special meeting.

44. Ms Margaret NG and Mr Ronny TONG said that according to Article 53 of the Basic Law, FS was second in line to act as CE, if CE was not able to discharge his duties for a short period. Ms NG and Mr TONG considered that FS should also be invited to the special meeting.

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45. Mr LAU Kong-wah said that it was not necessary to invite FS on this occasion, as he was not responsible for making the arrangements for the election of the new CE.

46. Mr LEUNG Kwok-hung said that FS should be invited, as he had indicated his interest in contesting for the office of CE.

47. Mr Ronny TONG said that FS would become Acting CE when the incumbent CS resigned in May 2005 to stand as a candidate in the election for the new CE.

48. Mrs Selina CHOW said that the order of precedence for acting in the office of CE was clearly set out in Article 53 of the Basic Law, and there was no need to discuss the matter. Mrs CHOW further said that only those officials involved in making the arrangements for the election of the new CE should be invited to the special meeting. Mr Howard YOUNG concurred with Mrs CHOW.

49. Dr KWOK Ka-ki said that CS, FS and SJ should be invited to the special meeting.

50. The Chairman put the proposal that FS should be invited to the special meeting of the House Committee on 15 March 2005 to vote. The outcome was that 13 Members voted in favour of the proposal, and 14 Members voted against the proposal. The Chairman said that FS would not be invited to the special meeting.

51. As regards the holding of a motion debate on the subject of CE's resignation and the related arrangements at the Council meeting on 16 March 2005, Mr LEE Wing-tat proposed that the Chairman of the House Committee should move the motion, which should be couched in neutral terms, and he would not move amendments to the motion. Dr YEUNG Sum expressed support for the proposal.

52. Mr LAU Kong-wah expressed concern that there was no guarantee that other Members would not move amendments to the motion, even though they agreed that the motion should be couched in neutral terms.

53. The Chairman said that it would only be a gentlemen's agreement that Members would not move amendments to the motion.

54. Mr Ronny TONG said that such an agreement would not be binding on those Members who were not present at this meeting.

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55. Ms Margaret NG considered that if the House Committee agreed that no amendment was to be made to the motion, the decision should be binding on all Members.

56. Assistant Secretary General 3 (ASG3) advised that in considering a request made to her to dispense with the notice for moving a motion for debate in Council, the President would also take account of whether Members had agreed not to move amendments to the motion. This was because reasonable time had to be allowed for Members to give notice, if amendments were to be moved.

57. Mrs Selina CHOW expressed concern that it was not possible to prevent individual Members from exercising their right to move amendments to a motion.

58. Mr James TIEN considered that it would be more appropriate for Mr LEE Wing-tat, instead of the House Committee Chairman, to move the motion for debate.

59. Ms Emily LAU preferred that a motion to adjourn the Council be moved under Rule 16(2) of RoP, as the arrangements to be made following the resignation of CE were urgent and important matters.

60. The Secretary General (SG) advised that for a motion to be moved under Rule 16(2), the President would have to be satisfied that the adjournment was for the purpose of discussing a specific issue of urgent public importance.

61. The Chairman said that if a motion to adjourn the Council was allowed to be moved under Rule 16(2), each Member could speak for not more than 15 minutes at the debate. Such a motion could only be moved between two items of business on the Agenda, whereas a motion under Rule 16(4) would be moved at the conclusion of all the business on the Agenda of the Council meeting. The duration of the debate on such a motion would normally be one hour, but the President could extend the duration of the debate.

62. Mr James TIEN was inclined for the motion to be moved under Rule 16(4), so that the debate would take place after all the business on the Agenda had been dealt with.

63. The Chairman suspended the meeting for five minutes to allow Members to discuss among themselves.

(The meeting resumed at 3:50 pm.)

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64. Mr LEE Wing-tat said that he would move a motion to adjourn the Council under Rule 16(4) of RoP at the meeting on 16 March 2005 for the purpose of raising the following issue with a view to eliciting a reply from a designated public officer –

“All the constitutional and legal issues arising from the office of the Chief Executive having become vacant, and related policies, measures and arrangements.”

（“行政長官職位出缺及其後涉及的一切有關憲制及法律的問題，以及相關的政策、措施及安排。”）

65. Mr LEE sought Members’ support for a recommendation to be made to the President to extend the duration of the debate, so that each Member speaking would be allowed a maximum of 15 minutes to speak.

66. Ms Margaret NG expressed concern that Members might not have sufficient time to speak, if the President did not accept the House Committee’s recommendation. Ms NG asked whether there was any precedent of Members being allowed to speak for 15 minutes at a debate to adjourn the Council held under Rule 16(4) of RoP.

67. The Chairman responded that there was no such precedent.

68. SG explained that according to Rule 16(7), the President could determine a longer time for the debate. The House Committee could make a recommendation for the President’s consideration.

69. Mr LEUNG Kwok-hung said that the House Committee should make its recommendation and leave it to the President to decide whether or not to accept the recommendation.

70. Mr LAU Kong-wah suggested that the duration of the debate should be two hours.

71. Mr James TIEN suggested that each Member should be allowed to speak for not more than 15 minutes.

72. The Chairman said that Mr LEE Wing-tat would move a motion to adjourn the Council under Rule 16(4) of RoP at the meeting on 16 March 2005 for the purpose of raising the issue set out in paragraph 64 above with a view to eliciting a reply from a designated public officer. The Chairman proposed to recommend to the President that the notice for moving the motion be waived, and that each Member speaking should be allowed a maximum speaking time of 15 minutes. Members agreed.

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**VII. Any other business**

73. There being no other business, the meeting ended at 4:07 pm.

Council Business Division 2  
Legislative Council Secretariat

17 March 2005

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