

立法會
Legislative Council

LC Paper No. CB(2) 1654/04-05

Ref : CB2/H/5/04

House Committee of the Legislative Council

**Minutes of the 28th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 20 May 2005**

Members present :

Hon Miriam LAU Kin-ye, 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
Hon Martin LEE Chu-ming, SC, JP
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 CHAN Kam-lam, 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
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 Andrew CHENG Kar-foo
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 Vincent FANG Kang, 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 Andrew LEUNG Kwan-yuen, SBS, 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 Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent :

Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Patrick LAU Sau-shing, SBS, JP

Clerk in attendance :

Mrs Justina LAM	Clerk to the House Committee
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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 Vivian KAM	Principal Council Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Council Secretary (2)5
Mrs Betty LEUNG	Chief Council Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Monna LAI	Assistant Legal Adviser 7
Miss Lolita SHEK	Senior Council Secretary (2)7

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I. Confirmation of the minutes of the 27th meeting held on 13 May 2005
(*LC Paper No. CB(2)1579/04-05*)

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) Merchant Shipping (Local Vessels and Miscellaneous Amendments) Bill 2005
(*LC Paper No. LS 68/04-05*)

3. The Chairman said that the Panel on Economic Services had been consulted on the introduction of the Bill, and Panel members had expressed various concerns.

4. The Legal Adviser recommended that a Bills Committee be formed to study the Bill in detail as policy issues were involved.

5. The Chairman proposed that a Bills Committee be formed. Members

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agreed. The following Members agreed to join: Mr SIN Chung-kai, Mr WONG Yung-kan and Ms Miriam LAU.

6. The Chairman said that as there was no vacant slot, the Bills Committee would be placed on the waiting list.

(ii) Waste Disposal (Amendment) Bill 2005
(LC Paper No. LS 66/04-05)

7. The Chairman said that the Bill sought to control the management of clinical waste and the disposal of imported waste, and to give effect to the Basel Ban in Hong Kong.

8. The Legal Adviser said that the content of the Bill was substantially the same as that of the Waste Disposal (Amendment) Bill 2003, which was introduced into the Legislative Council (LegCo) on 25 June 2003. A Bills Committee was formed to scrutinise the Bill, but owing to the unavailability of a Bills Committee slot, the Bill lapsed at the end of the term.

9. The Legal Adviser recommended that a Bills Committee be formed to study the Waste Disposal (Amendment) Bill 2005 in detail.

10. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Ms Emily LAU and Mr LEE Wing-tat.

11. The Chairman said that as there was no vacant slot, the Bills Committee would be placed on the waiting list.

(b) Legal Service Division report on subsidiary legislation gazetted on 13 May 2005 and tabled in Council on 18 May 2005
(LC Paper No. LS 67/04-05)

12. The Chairman said that a total of eight items of subsidiary legislation were gazetted on 13 May 2005 and tabled in Council on 18 May 2005.

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

14. The Chairman reminded Members that the deadline for amending these eight items of subsidiary legislation was 15 June 2005, or 6 July 2005 if extended by resolution.

IV. Further report by the Legal Service Division on outstanding bills

Protection of Endangered Species of Animals and Plants Bill

(LC Paper No. LS 69/04-05)

[Previous papers:

LC Paper No. LS 59/04-05 issued vide LC Paper No. CB(2) 1405/04-05 dated 28 April 2005; and

paragraphs 8 to 10 of the minutes of the 25th House Committee meeting on 29 April 2005 (LC Paper No. CB(2) 1443/04-05 issued vide LC Paper No. CB(2) 1471/04-05 dated 5 May 2005)]

15. The Legal Adviser said that when the House Committee considered the Bill at its meeting on 29 April 2005, Members did not raise any queries. The Legal Service Division had written to the Administration to clarify some policy and drafting issues on the Bill, including the policy intent of the selection criteria of "relevant parts of the Convention instrument that have the force of law in Hong Kong" in Schedule 3 to the Bill.

16. The Legal Adviser recommended that a Bills Committee be formed to scrutinise the Bill in view of the policy issues raised by certain important provisions of the Bill.

17. The Chairman proposed that a Bills Committee be formed. Members agreed. Mr CHEUNG Man-kwong agreed to join.

18. The Chairman said that as there was no vacant slot, the Bills Committee would be placed on the waiting list.

V. Further business for the Council meeting on 25 May 2005

Bills - First Reading and moving of Second Reading

Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill

19. The Chairman said that Dr David LI had given notice to present the above Bill to LegCo on 25 May 2005. The House Committee would consider the Bill at its meeting on 27 May 2005.

VI. Business for the Council meeting on 1 June 2005

(a) Questions

(LC Paper No. CB(3) 606/04-05)

20. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 1 June 2005.

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

(i) Civil Aviation (Amendment) Bill 2005

(ii) Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill

21. The Chairman said that the Administration had given notice to present the above two Bills to LegCo on 1 June 2005. The House Committee would consider the two Bills at its meeting on 3 June 2005.

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

Immigration (Amendment) Bill 2005

22. The Chairman said that at the House Committee meeting on 29 April 2005, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) Government motion

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

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

Federation of Hong Kong Industries (Amendment) Bill 2005

24. The Chairman said that at the House Committee meeting on 6 May 2005, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(f) **Members' motions**

(i) **Motion to be moved by Hon Albert CHAN Wai-yip**

25. The Chairman said that the subject of the motion to be moved by Mr Albert CHAN was "Demanding the suspension of privatization", and the wording of the motion had just been issued to Members and also tabled at the meeting.

(ii) **Motion on "Investment income of the Exchange Fund"**

(Wording of the motion issued vide LC Paper No. CB(3) 612/04-05 dated 18 May 2005.)

26. The Chairman said that the above motion would be moved by Mr SIN Chung-kai, and the wording of the motion had been issued to Members.

27. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 25 May 2005.

VII. Report of Bills Committees and subcommittees

Report of the Bills Committee on Trade Descriptions (Amendment) Bill 2004

28. Ms Margaret NG, Chairman of the Bills Committee, said that the Bills Committee had completed its scrutiny work and would provide a written report to the House Committee at its next meeting. Ms NG added that the Administration intended to resume the Second Reading debate on the Bill on 8 June 2005.

29. The Chairman reminded Members that the deadline for giving notice of Committee Stage amendments was Monday, 30 May 2005.

VIII. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 1580/04-05)

30. The Chairman said that there were 15 Bills Committees and 10 subcommittees in action. There were also four Bills Committees on the waiting list, including the three Bills Committees formed under agenda items III(a) and IV above.

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31. The Chairman said that Ms Margaret NG, Chairman of the Subcommittee on Subsidiary Legislation Relating to Consular Matters, would move a motion at the Council meeting on 25 May 2005 to extend the scrutiny period of the seven Regulations relating to consular matters, tabled in Council on 27 April 2005, to 15 June 2005.

IX. Proposal to invite prospective candidates of the Chief Executive election to attend a meeting of the Legislative Council to answer Members' questions
(Letter dated 13 May 2005 from 25 Members to the Chairman of the House Committee (LC Paper No. CB(2) 1592/04-05(01))

32. Ms Emily LAU said that she and 24 other pro-democracy Members proposed that prospective candidates of the Chief Executive (CE) election should be invited to attend a meeting of LegCo to answer Members' questions, so as to provide an opportunity for Members to understand the platform and philosophy of governance of these candidates.

33. Ms LAU further said that she had discussed the proposal with the LegCo Secretariat and was given to understand that the proposal was not in order under the Rules of Procedure (RoP) and House Rules (HR). However, Members could consider holding an informal meeting similar to the special forum held for the presentation of platform by candidates for the office of the President of LegCo. Ms LAU believed that the pro-democracy Members would not object to holding an informal meeting for the purpose, and they would also consider only inviting the candidates, if inviting the prospective candidates would pose problems.

34. The Chairman said that according to Rule 18 of RoP, the business of a Council meeting did not include providing a forum for prospective candidates or candidates of the CE election to answer Members' questions. The matter also did not fall within the terms of reference of any committee of the Council, including the House Committee.

35. The Legal Adviser advised that the House Committee was a committee formed under the Council and its main function was to deal with matters related to the business of the Council. The terms of reference of the House Committee could not exceed the scope of the business of a Council meeting.

36. Mr Ronny TONG asked whether it was in order for the Panel on Constitutional Affairs (CA Panel) to invite prospective candidates of the CE election to attend its meeting to brief Members on their platform. Mr TONG added that the matter could be regarded as a constitutional issue, and it was the practice of Panels to invite deputations to give views.

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37. The Legal Adviser said that Panels were set up by resolution of the Council, and their terms of reference were recommended by the House Committee and approved by the Council. The main function of Panels was to provide a forum for Members to hold discussions on policy issues with government officials, in order to assist Members in monitoring the work of the Government. Deputations were invited from time to time to give views on an issue or government policy, and the purpose was also for assisting Members in monitoring the work of the Government.

38. The Legal Adviser further said that Members should carefully consider whether inviting the prospective candidates, as if they were deputations, to attend a Panel meeting to brief Members on their platform was within the terms of reference of that Panel and in compliance with RoP.

39. The Secretary General pointed out that the questions to be raised by Members with the prospective candidates would likely cover a wide spectrum of government policies, and not just constitutional issues.

40. Mr CHEUNG Man-kwong asked whether individual Panels could invite the prospective candidates to give views on those government policies which fell within their respective ambits.

41. The Chairman said that Members should focus their discussion on whether prospective candidates of the CE election should be invited to a meeting of the Council or House Committee to brief Members on their platform.

42. Mr LEE Cheuk-yan said that it was important for Members to understand the platform of the prospective candidates, as the governance of the new CE would affect Hong Kong's development. It would not be appropriate for individual Panels to hold separate meetings with the prospective candidates, as each Panel would have to confine its discussion to only one or two policy areas. Mr LEE suggested that the prospective candidates be invited to a House Committee meeting, which could be regarded as a joint meeting of all the 18 Panels, to give their views on government policies.

43. Mr LAU Kong-wah did not agree to Mr LEE Cheuk-yan's proposal, as it would not be in order under RoP for the House Committee to hold such a meeting. Mr LAU believed that there would be organisations, e.g. television stations, holding forums for candidates of the CE election to present their platform and philosophy of governance to the public.

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44. Mr LEUNG Kwok-hung said that RoP should be amended to keep pace with new developments. Mr LEUNG further said that the people of Hong Kong had elected 60 LegCo Members who would soon elect the new CE on their behalf. It was the duty of Members, as members of the Election Committee (EC), to put questions to the candidates in order to decide who to vote for. Mr LEUNG added that it would be more convenient for the House Committee to organise such a meeting. He requested that the Legal Adviser to look for grey areas in RoP to enable such a meeting to be held by the House Committee.

45. The Chairman said that at her request, the Legal Adviser had examined RoP very carefully, and advised her that it was not in order for the House Committee to hold such a meeting.

46. Mr Albert HO said that as all 60 LegCo Members were EC members, a meeting with the prospective candidates of the CE election should be held in the LegCo Building. Mr HO suggested that if it was not in order to invite the candidates to a meeting of the Council or House Committee, an informal meeting, similar to the forum organised for candidates of the office of the President of LegCo to present their platform, should be held. Ms Emily LAU concurred with Mr Albert HO.

47. Referring to the earlier remark of Mr LEUNG Kwok-hung, Mr CHAN Kam-lam said that LegCo was not a private club. Members must abide by RoP, and there was no precedent of LegCo organising election forums in the past. Mr CHAN further said that it was worrying for a LegCo Member to advocate making use of grey areas in the law or certain rules in order to get his way. Mr CHAN added that as EC members, LegCo Members would be voting in their individual capacities. They should obtain information on the platform of candidates of the CE election through other channels.

48. Mr CHAN queried how prospective candidates could be defined, and whether those Members who made such a proposal were thinking of inviting anyone who indicated interest in becoming the new CE. Mr CHAN added that the public would find such a proposal laughable and question the quality of such Members as law-makers.

49. Mr Martin LEE said that the Secretary for Justice (SJ) had made use of loopholes in the legislation to change the term of office of the new CE. Mr LEE considered that Mr LEUNG Kwok-hung was only following SJ's example, when he requested the Legal Adviser to look for grey areas in RoP. Mr LEE further said that although there was no precedent of LegCo holding election forums, he could not see why LegCo Members, being EC members, could not invite the prospective candidates to present their platform.

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50. Mr LEUNG Kwok-hung said that grey areas referred to provisions in the law or certain rules which could be subject to various interpretations. Mr LEUNG further said that he could not understand why LegCo Members, who were EC members, could not invite the candidates to explain their platform at a meeting. He found it regrettable that RoP had made it impossible for Members to organise such a meeting.

51. The Chairman concluded that as it was not in order under RoP to invite prospective candidates of the CE election to a meeting of the Council or the House Committee to answer Members' questions, the proposal would not be pursued. Members agreed.

52. The Chairman said that Members could consider the option of inviting candidates of the CE election to an informal meeting. However, Members would not enjoy the privileges and immunities provided by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) at such a meeting. The Chairman further said that if Members would like to discuss the option, she would facilitate the discussion, even though the informal meeting would not have anything to do with the House Committee.

53. Mr Martin Lee said that the prospective candidates, and not just the candidates, should be invited. Mr LEE further said that if all 60 LegCo Members decided to nominate a prospective candidate after listening to his platform, the prospective candidate might be able to obtain the required nomination by 100 EC members.

54. Referring to the remarks of the Chairman, Mr Albert CHENG said that since the proposed informal meeting had nothing to do with the House Committee, it should not be discussed by the House Committee. Mr CHENG suggested that the Chairman should end the meeting, and Members could continue the discussion after the meeting.

55. The Secretary General said that the discussion on the option of holding an informal meeting to put questions to candidates of the CE election arose from the discussion on the proposal of holding a meeting of the Council or House Committee for the purpose. It was in order for the discussion on whether to hold an informal meeting to continue at this meeting. Mr Ronny TONG and Mr Albert HO concurred with the Secretary General.

56. Dr YEUNG Sum said that there were occasions in the past where issues or matters of concern to all LegCo Members were discussed at House Committee meetings. As the election of the new CE was very important and all LegCo Members were EC members, Members should continue to discuss the option of inviting the prospective candidates to an informal meeting.

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57. Mr Albert CHENG said that if organising an informal meeting with prospective candidates of the CE election, which had nothing to do with the House Committee, could be discussed at a House Committee meeting, it could be argued that the House Committee could hold a meeting for prospective candidates of the CE election to present their platform, even though this was not within its terms of reference. Mr CHENG reiterated that the Chairman should end the discussion.

58. Mr LAU Kong-wah concurred with Mr Albert CHENG. Mr LAU pointed out that the option of inviting candidates of the CE election to an informal meeting was not on the agenda of today's meeting and should not be discussed. Mr LAU added that Members belonging to Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) objected to holding such an informal meeting. They considered it more appropriate for election forums to be organised by other bodies, and not LegCo.

59. Mr Ronny TONG, Mr Albert HO and Dr YEUNG Sum said that those Members who objected to holding an informal meeting could choose not to attend, but they should not prevent other Members from organising the informal meeting.

60. Mr Jasper TSANG said that no Member could prevent other Members from organising the proposed informal meeting, but the agreement of all Members had to be sought if the event was to be organised in the name of all 60 LegCo Members.

61. Mr LEE Cheuk-yan said that as Members belonging to DAB had clearly expressed their objection, the proposed informal meeting could not be held in the name of all 60 LegCo Members. Mr LEE asked whether Members would object to the facilities in the LegCo Building being used, if the informal meeting was to be organised by some and not all Members.

62. The Chairman advised that if the facilities in the LegCo Building were to be used for the informal meeting, the approval of The Legislative Council Commission had to be sought.

63. Mr Albert HO said that those Members who did not wish to attend the informal meeting should not object to other Members seeking the Commission's approval to use the facilities in the LegCo Building to organise the event.

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64. Mr LEUNG Kwok-hung, Mr LEE Cheuk-yan and Mr Ronny TONG said that the proposal of holding an informal meeting in the name of all 60 LegCo Members should be put to vote.

65. In response to the Chairman, the Legal Adviser explained that Annex I to the Basic Law stipulated that LegCo Members were EC members, and they should vote in their individual capacities. Election of CE was not one of the functions of LegCo as stipulated in Article 73 of the Basic Law. The Legal Adviser further explained that as holding an informal meeting for candidates of the CE election to present their platform was not the business of the Council or House Committee, it was not in order for the House Committee to take a vote on the matter.

66. The Chairman said that if the informal meeting was to be organised in the name of all 60 Members, there should be consensus among all Members. It was not appropriate for the House Committee to take a vote on the matter, as some Members had already indicated objection to holding an informal meeting.

67. Mr Albert CHAN agreed that it was not appropriate for the House Committee to take a vote on whether an informal meeting should be held, as the matter was outside the terms of reference of the House Committee. He suggested that the discussion should be closed. Mr TAM Yiu-chung concurred with Mr CHAN.

68. The Chairman said that the option of inviting candidates of the CE election to an informal meeting would not be discussed further.

X. Any other business

69. There being no other business, the meeting ended at 3:38 pm.