

立法會
Legislative Council

LC Paper No. CB(2) 1999/06-07

Ref : CB2/H/5/06

House Committee of the Legislative Council

**Minutes of the 26th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 25 May 2007**

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
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, 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 Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
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, SBS, JP

Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Jeffrey LAM Kin-fung, SBS, 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
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent :

Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon MA Lik, GBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Arthur CHEUNG	Acting Legal Adviser
Ms Pauline NG	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mrs Constance LI	Principal Council Secretary (Complaints)

Mr Andy LAU	Chief Council Secretary (1)2
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Ms Connie FUNG	Assistant Legal Adviser 3
Miss Monna LAI	Assistant Legal Adviser 7
Ms Emily PANG	Senior Public Information Officer 2
Ms Amy YU	Senior Council Secretary (2)3

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I. Confirmation of the minutes of the 25th meeting held on 18 May 2007
(LC Paper No. CB(2) 1924/06-07)

The minutes were confirmed.

II. Matters arising

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

Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions

2. The Chairman said that she had conveyed to CS the Subcommittee's request for CS to examine critically its deliberations and proposals in consultation with the Secretary for Justice. She had also written to CS on the matter on 18 May 2007. CS had responded that the Administration would let the Subcommittee have a detailed response within three months.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 18 May 2007 and tabled in Council on 23 May 2007

(LC Paper No. LS 73/06-07)

3. The Chairman said that a total of 14 items of subsidiary legislation were gazetted on 18 May 2007 and tabled in Council on 23 May 2007.

4. Regarding the Fugitive Offenders (Malaysia) (Amendment) Order 2007 and the Fugitive Offenders (Suppression of the Financing of Terrorism) Order made under the Fugitive Offenders Ordinance, the Chairman said that the Ordinance restricted the power of the Legislative Council (LegCo) to only repeal the Orders.

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5. Mr. James TO considered that a subcommittee should be formed to study the two Orders.
6. The Chairman proposed that a subcommittee be formed to study the two Orders in detail. Members agreed. The following Members agreed to join: Ms Margaret NG (as advised by Ms Audrey EU) and Mr James TO.
7. Regarding the Building Management (Amendment) Ordinance 2007 (Commencement) Notice 2007, Mr James TO said that the Bills Committee on Building Management (Amendment) Bill 2005 had discussed the commencement date of the relevant provisions of the Bill in August/September 2007 and had requested the Administration to inform members of its comprehensive plan to carry out publicity on the proposals in the Bill. As the Administration had not provided such information so far, Mr TO suggested that the Legal Service Division should request the Administration for the information. He enquired if a decision on the subsidiary legislation could be deferred to the next House Committee meeting, having regard to its scrutiny period.
8. The Acting Legal Adviser said that the scrutiny period of the Commencement Notice was the same as that of the other items of subsidiary legislation tabled in Council on 23 May 2007, and there should be no problem in deferring a decision on the Commencement Notice for a week. The Acting Legal Adviser further said that the Legal Service Division would request the Administration to provide the information as soon as practicable.
9. Members agreed to defer the decision on the Commencement Notice to the next House Committee meeting pending receipt of the Administration's response.
10. Members did not raise any query on the other 11 items of subsidiary legislation.
11. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 20 June 2007.

IV. Further business for the Council meeting on 30 May 2007

Questions

(LC Paper No. CB(3) 597/06-07)

12. The Chairman said that Mr Albert HO, Dr LUI Ming-wah, Ms Emily LAU and Mr LAU Kong-wah had replaced their previous oral questions, and Miss CHOY So-yuk had replaced her written question.

V. Business for the Council meeting on 6 June 2007

(a) Questions

(LC Paper No. CB(3) 598/06-07)

13. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

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

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

(c) Government motion

Proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 588/06-07 dated 17 May 2007.)

(LC Paper No. LS 74/06-07)

15. The Chairman said that the proposed resolution was for seeking the approval of LegCo for the Mutual Legal Assistance in Criminal Matters (Malaysia) Order.

16. The Chairman further said that the Mutual Legal Assistance in Criminal Matters Ordinance restricted LegCo's power to only repeal the whole Order but not amend any part of it.

17. Mr James TO considered that a subcommittee should be formed to study the proposed resolution.

18. The Chairman proposed that a subcommittee be formed to study the proposed resolution. Members agreed. The following Members agreed to join: Mr James TO, Ms Miriam LAU and Ms Audrey EU.

19. The Chairman said that the Administration would be requested to withdraw its notice for moving the proposed resolution.

(d) Members' motions

(i) Motion on "Commission on Children"

(Wording of the motion issued vide LC Paper No. CB(3) 603/06-07 dated 23 May 2007.)

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20. The Chairman said that the above motion would be moved by Dr Fernando CHEUNG and the wording of the motion had been issued to Members.

- (ii) **Motion to be moved by Hon Bernard CHAN**
(*Wording of the motion issued vide LC Paper No. CB(3) 609/06-07 dated 23 May 2007.*)

21. The Chairman said that the subject of the motion to be moved by Mr Bernard CHAN was "Concern about students with special educational needs".

22. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 30 May 2007.

VI. Report of Bills Committees and subcommittees

Report of the Bills Committee on Rail Merger Bill
(*LC Paper No. CB(1) 1681/06-07*)

23. The Chairman, in her capacity as Chairman of the Bills Committee, said that the Bills Committee had held 36 meetings lasting for a total of 81 hours to examine the Bill.

24. The Chairman explained that the majority of members of the Bills Committee were in support of the Bill. However, some members remained concerned about the merger proposal for various reasons. The main areas of concern raised by members included possible monopolisation after the merger, transfer of public assets to a listed corporation, fare regulation after the merger, the financial arrangements for the proposed merger, the pricing and valuation of the property package, the monitoring of the railway systems, the provision of public toilets, automatic platform gates and radio reception along the railways, the provision of concessionary fares to and improvements to the station facilities for people with disabilities, and measures to enhance their employment opportunities.

25. The Chairman further said that apart from the Committee Stage amendments (CSAs) proposed by the Administration, some members also intended to move CSAs to the Bill. In order that these members could brief the Bills Committee on the merits and the drafting aspects of their CSAs, the Bills Committee had scheduled a series of meetings for the purpose. However, as the complete set of CSAs to be moved by the Administration was only available on 21 May 2007, these members had great difficulties in providing their CSAs at the meetings held before the Bills Committee reported to the House Committee on 25 May 2007, or before the deadline for giving notice of CSAs on 28 May 2007 if the Bill was to resume its Second Reading debate on

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6 June 2007. After discussion, the Bills Committee decided to meet on 29 May 2007 to consider members' CSAs and to seek the President's leave to extend the deadline for giving notice of CSAs.

26. The Chairman further said that she had relayed the Bills Committee's decision to the President. The President was prepared to give permission for extending the deadline for giving notice of CSAs to the Bill to the midnight of 29 May 2007. The President had also indicated that she would consider the CSAs as soon as practicable with a view to giving a ruling on the CSAs no later than the midnight of 5 June 2007. The Chairman urged Members to submit their CSAs as early as possible.

27. The Chairman added that the majority of members of the Bills Committee supported the resumption of the Second Reading debate on the Bill on 6 June 2007.

28. Mr Andrew CHENG said that although the Bills Committee had convened meetings lasting for 81 hours, he considered it necessary to meet for say another 10 hours given the complex and important nature of the Bill. He opined that the Administration had pressed for the resumption of the Second Reading debate on the Bill on 6 June 2007 in order that the vetting of the merger-related subsidiary legislation could be completed before the end of the current legislative session. However, the draft subsidiary legislation just provided by the Administration in the morning contained many controversial proposals, such as the imposition of a penalty of imprisonment for the offences of sale of tickets and use of abusive language within the railway premises. In the circumstances, he considered it highly unlikely that Members could complete the scrutiny of the subsidiary legislation by the last Council meeting of the current session on 11 July 2007. It was also unrealistic of the Administration to expect a non-extension of the scrutiny period of the subsidiary legislation.

29. Mr CHENG further said that he noted the Administration's intention to complete the legislative process for the rail merger within the current legislative session. He had requested the Administration to consider deferring the resumption of the Second Reading debate on the Bill for one week so as to allow more time for members to prepare their CSAs to the Bill. However, his reasonable request was rejected by the Administration. He said that problems had been identified with some provisions of the Bill in the course of scrutiny, and it was necessary to adopt a prudent approach to ensure that important issues would not be overlooked. Given the complexity and the far-reaching implications of the Bill and the related subsidiary legislation, he considered that LegCo should not aim at concluding the legislative process solely to meet the Administration's target timetable.

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30. Mr Albert CHAN echoed the concern of Mr Andrew CHENG about the complexity of the Bill and the insufficient time made available to LegCo to scrutinise it. He said that in order to complement the Administration's target timetable to resume the Second Reading debate on the Bill on 6 June 2007, the Bills Committee had convened a spate of meetings recently. Mr CHAN considered that many important and fundamental issues had not been discussed in depth by the Bills Committee, such as the appropriateness of granting a listed corporation exemption from many provisions in the Buildings Ordinance and the Public Health and Municipal Services Ordinance. He had already expressed concern during the scrutiny of the Bill, and intended to move CSAs in this regard.

31. Mr CHAN stressed the need for sufficient scrutiny time for LegCo and expressed strong dissatisfaction with the hasty manner in which the Bill had been examined. He said that the Administration was late in the submission of papers and had conducted inadequate public consultation. He considered that the handling of the rail merger proposal was even worse than that of the listing of The Link Real Estate Investment Trust. Mr CHAN indicated that he would not be available to attend the Council meeting on 6 June 2007, but added that his request for deferring the resumption of the Second Reading debate on the Bill for one week was not to facilitate his attendance but to allow more time for Members to examine the Bill.

32. The Chairman explained that according to the Administration and the two railway corporations, the whole legislative exercise for the rail merger, including the enactment of both the primary and the subsidiary legislation, had to be completed within the current legislative session if fare reduction were to be implemented in the autumn of 2007. If the Bill was not enacted on 6 June 2007, it would not be possible for the vetting of the merger-related subsidiary legislation to be completed before the summer recess and consequently, the effective date of the fare reduction would be affected. It was for this reason that the Bills Committee had made its best efforts to complement the target timetable of the Administration to resume the Second Reading debate on the Bill on 6 June 2007.

33. As it was already 3:00 pm, the Chairman pointed out that in accordance with Rule 20(e) of the House Rules, the House Committee meeting had to be suspended and resumed after the Finance Committee meeting to deal with the unfinished business on the Agenda.

(The meeting was suspended at 3:02 pm and resumed at 5:07 pm.)

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34. Dr Fernando CHEUNG said that the Bills Committee had an excessively tight meeting schedule of 13 hours in the past week and 10 hours in the week before. He considered such a compressed meeting schedule unnecessary, inappropriate and unduly taxing on Members. Dr CHEUNG said that it was incumbent upon Members to ensure that public interests would be safeguarded in the complex merger deal. One such issue was the inclusion of property development rights in the deal which could generate an estimated profit of \$80 billion, but it was not yet clear how this huge amount of profit could be enjoyed by the public in terms of rail fare. He shared the view of some Members that it was too hasty to resume the Second Reading debate on the Bill on 6 June 2007. Given the controversial nature of some proposals in the subsidiary legislation, he considered it unnecessary and inappropriate to rush through their scrutiny within four weeks. Dr CHEUNG cautioned that should important issues be overlooked in the scrutiny process, the consequences to the general public could be detrimental.

35. Mr LEUNG Kwok-hung said that the League of Social Democrats had all along been opposed to the proposed merger of a listed corporation with a Government-owned corporation. His gravest concern was the lack of public consultation on the merger deal which had significant bearings on public interests. The only justification given by the Administration for resuming the Second Reading debate on the Bill on 6 June 2007 was to enable the public to benefit from the fare reduction as early as possible. However, Mr LEUNG was of the view that most members of the public would prefer an extensive consultation on the proposed merger by the Administration to the Bill being pushed through hastily for the sake of effecting the fare reduction a few months earlier. He stressed that it would be irresponsible of Members to enact such an important Bill in the absence of public consultation by either the Administration or LegCo. The approach LegCo should take was to request the Administration not to resume the Second Reading debate on the Bill on the date as planned. Mr LEUNG said that he himself should not be held responsible should any loopholes in the legislation be unveiled after its hasty enactment.

36. Mrs Selina CHOW pointed out that after the legislative process for the Bill and the related subsidiary legislation had been completed, other related arrangements would have to be made including the holding of an Extraordinary General Meeting for the minority shareholders to approve the merger package, hence the need for a target timetable. She said that Members belonging to the Liberal Party saw no reason for LegCo not to complement the target timetable of the Administration which would enable the public to benefit from the fare reduction earlier. As the commitment of the Mass Transit Railway Corporation Limited (MTRCL) of not raising fares would remain in force only until June 2009, the earlier the merger was implemented, the longer the public would enjoy the fare reduction.

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37. Mrs CHOW disagreed with the view that the Bills Committee had not examined some important issues. She opined that on the contrary, it had conducted many hours of meetings to thoroughly study the Bill and the related issues, including matters relating to persons with disabilities. She stressed that many issues examined by the Bills Committee were ongoing concerns which would be followed up after the completion of scrutiny of the Bill. It was not uncommon for LegCo to work under a very tight schedule towards the end of a legislative session in order to complete the scrutiny of legislative proposals.

38. Mr LEUNG Yiu-chung stressed that there was no question about the deliberate attempt of some Members to delay the enactment of the Bill. Members had given views on many issues and had undertaken a significant amount of work and research. The concern of some Members about the tight meeting schedule of the Bills Committee was legitimate as important issues might be overlooked in the hasty process of scrutiny. Mr LEUNG added that although there appeared little room for negotiating the target date for the resumption of the Second Reading debate on the Bill, it was important that Members should learn from the experience in the scrutiny of the Bill and should not rush through the scrutiny of the merger-related subsidiary legislation.

39. Mr LAU Kong-wah said that the Bills Committee had examined in depth all important issues relevant to the merger exercise including, inter alia, the impact of the merger on railway staff, fare regulation and the inclusion of property rights in the deal. The Bills Committee had also considered related issues, such as the provision of public toilets and automated platform gates. Suggestions put forward by the Bills Committee had been taken on board by the Administration. He disagreed with the view that the Bills Committee had left out important issues of the Bill in its scrutiny.

40. Mr LAU further said that the right of Members to move CSAs should be respected, and it was important for them to be given the opportunity to explain the merits of their CSAs to the Bills Committee. He, therefore, supported the decision of the Bills Committee to hold a four-hour meeting on 29 May 2007 to discuss members' CSAs and to seek the President's leave to extend the deadline for giving notice of CSAs.

41. Mr LAU appreciated the need for the resumption of the Second Reading debate on the Bill on 6 June 2007, as any delay would have a knock-on effect on the scrutiny period of the related subsidiary legislation. Should the scrutiny of the subsidiary legislation go beyond the current legislative session, the effective date for the reduction in rail fares brought about by the merger would be deferred. The public would then not be able to enjoy the fare reduction at the end of 2007 as originally planned, and the period for not increasing fares would be shortened. Having regard to the complexity of the

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merger-related subsidiary legislation involving the bylaws of two railway corporations, Mr LAU appealed to Members to support the resumption of the Second Reading debate on the Bill on 6 June 2007 as this would allow four weeks for Members to complete scrutiny of the subsidiary legislation before the last Council meeting of the current legislative session.

42. Ms Emily LAU agreed with some Members' view that the scrutiny of the Bill was too hasty and more time was needed to complete its scrutiny. She said that given the complexity of the merger-related subsidiary legislation, it was unlikely that its scrutiny could be completed within the current legislative session. That being the case, she saw no point in insisting on the resumption of the Second Reading debate on the Bill on 6 June 2007.

43. Dr Fernando CHEUNG said that he and Mr Andrew CHENG concurred with Ms Emily LAU. Dr CHEUNG further said that some members had considered amending the long title of the Bill but were advised by the Legal Adviser to the Bills Committee that this might not be possible under the Rules of Procedure. Dr CHEUNG reckoned that the Committee on Rules of Procedure could be invited to consider the subject matter.

44. The Chairman said that if Dr CHEUNG wanted to discuss the subject matter at a House Committee meeting, he should give notice formally and provide relevant details. Dr CHEUNG noted the Chairman's advice.

45. Mr LEUNG Kwok-hung reiterated that LegCo would be held responsible for the enactment of the Bill in the absence of public consultation. He opined that if MTRCL had the best interests of the public in mind, it should further extend the effective period of its commitment not to increase fares to complement LegCo's scrutiny of the Bill. He queried the need for hasty completion of scrutiny of the Bill in order to accommodate the arbitrary decision of MTRCL not to increase fares before a certain date.

46. The Chairman explained that the Bills Committee had made tremendous efforts in achieving the extension of the fare freeze period. It was only after many rounds of discussion that MTRCL agreed to extend the expiry of the fare freeze period from April 2008 to June 2009.

47. The Chairman put to vote the recommendation of the Bills Committee that the Second Reading debate on the Bill be resumed on 6 June 2007. The result was: 20 Members voted in favour of the proposal, 5 Members voted against the proposal and one Member abstained. The proposal was supported.

48. The Chairman also put to vote the Bills Committee's proposal of seeking the President's leave to extend the deadline for giving notice of CSAs to midnight of 29 May 2007. All Members voted in favour of the proposal.

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49. The Chairman reiterated that the President had indicated that she would consider the CSAs as soon as practicable with a view to giving a ruling on the CSAs no later than the midnight of 5 June 2007.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1923/06-07)

50. The Chairman said that there were 14 Bills Committees and nine subcommittees under the House Committee in action.

51. The Chairman informed Members that Mr LAU Kong-wah, in his capacity as the Chairman of the Subcommittee on Subsidiary Legislation Relating to the Shenzhen Bay Port Hong Kong Port Area, would move a motion at the Council meeting on 30 May 2007 to extend the scrutiny period of the five Regulations to 27 June 2007.

VIII. Formation of a subcommittee to study the draft subsidiary legislation relating to the rail merger

(Letter dated 21 May 2007 from the Secretary for the Environment, Transport and Works to the Chairman of the House Committee (LC Paper No. CB(2)1936/06-07(01))

(Draft subsidiary legislation provided by the Administration relating to the rail merger (LC Paper No. CB(2)1974/06-07))

52. The Chairman referred Members to the letter from the Secretary for the Environment, Transport and Works, and said that according to the Administration, if the Rail Merger Bill was passed at the Council meeting on 6 June 2007, the related subsidiary legislation would be gazetted on 8 June 2007 and laid on the table of the Council on 13 June 2007. The House Committee would then consider the subsidiary legislation at its meeting on 15 June 2007. In order to allow more time for Members to study the subsidiary legislation, the Administration had invited Members to consider the setting up of a subcommittee to examine the draft subsidiary legislation.

53. The Chairman further said that there were precedents in which a Panel or a Bills Committee studied the draft subsidiary legislation relating to the bill under scrutiny. There were also examples where a subcommittee was formed under the House Committee to study draft subsidiary legislation. One such example was the formation of a subcommittee to study the draft subsidiary legislation relating to the Telecommunications (Amendment) Bill 2001 at the House Committee meeting on 4 May 2001. As the Bills Committee on the Rail Merger Bill would be dissolved if the Bill was enacted on 6 June 2007, the formation of a subcommittee under the House Committee to study the draft subsidiary legislation could be a viable approach.

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54. The Chairman added that even if a subcommittee was formed to study the draft subsidiary legislation relating to the rail merger, the House Committee would consider how the subsidiary legislation should be dealt with after it had been tabled in the Council.

55. Mr TAM Yiu-chung supported the setting up of a subcommittee to study the draft subsidiary legislation so that the scrutiny work could start earlier.

56. Members agreed that a subcommittee be formed to study the draft subsidiary legislation relating to the rail merger. The following Members agreed to join: Mrs Selina CHOW, Ms Miriam LAU, Mr Andrew CHENG (as advised by Mr Fred LI), Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Jeffrey LAM and Prof Patrick LAU.

IX. Any other business

57. There being no other business, the meeting ended at 5:37 pm.

Council Business Division 2
Legislative Council Secretariat
30 May 2007

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