

立法會
Legislative Council

LC Paper No. CB(2) 306/08-09

Ref : CB2/H/5/08

House Committee of the Legislative Council

**Minutes of the 6th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 14 November 2008**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-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 KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon CHAN Tanya
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members absent :

Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Ms Pauline NG	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3

Mrs Percy MA	Assistant Secretary General (Special Duty)
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of the minutes of the 5th meeting held on 7 November 2008
(LC Paper No. CB(2) 262/08-09)

The minutes were confirmed.

II. Matters arising

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

Letter from CS concerning the Council meeting on 15 October 2008

2. The Chairman said that she had conveyed to CS the concern expressed by some Members at the last House Committee meeting about the remarks made by the President at an interview at a television programme on 26 October 2008 concerning the Council meeting on 15 October 2008. CS noted that the President had subsequently explained through his spokesman to the media that according to his recollection, he did not have the impression that CE was giving any direction to him on the suspension of meeting. The President had also stressed that it was entirely a decision of the Legislative Council (LegCo) President on whether a Council meeting ought to be suspended.

3. Noting the President's recollection, Mr James TO said that it seemed different from what the President had said at the television programme.

4. The Chairman said that she was merely relaying to Members what the President had explained through his spokesman to the media, and could not verify its accuracy.

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5. Mr James TO sought clarification on whether the President had explained the matter to the media through the LegCo Secretariat, and if so, whether written information in this regard was available.

6. At the invitation of the Chairman, Secretary General (SG) said that pursuant to the discussion at the last House Committee meeting, she had watched the relevant television programme and had also sought clarification with the President. The President told her that he had already explained to the media that he did not have the impression that CE was giving any direction to him on the suspension of the Council meeting should eggs be thrown inside the Chamber. The President also said that he did not have the impression that CE was giving him any direction, as it was entirely a matter for the LegCo President to decide whether a Council meeting should be suspended.

7. Mr James TO requested the Secretariat to provide to Members the information concerning what the President had said on the television programme and to the media. Members agreed.

Frequency and duration of CE's Question and Answer (Q & A) Sessions

8. The Chairman said that she had reminded CS about Members' request for increasing the frequency and extending the duration of CE's Q & A Sessions. CS replied that he had reminded the CE's Office and a response from CE was awaited.

Introduction of bills

9. The Chairman further said that she had drawn CS's attention to Members' concern about the "bunching" of bills at the end of a session or a term. She had also relayed to CS Members' request for early introduction of bills on the Legislative Programme, in particular non-controversial bills. CS assured Members that Bureaux Secretaries had been reminded to ensure that legislative proposals would be submitted to LegCo as early as possible.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on subsidiary legislation gazetted on 7 November 2008 and tabled in Council on 12 November 2008**
(*LC Paper No. LS 14/08-09*)

10. The Chairman said that two items of subsidiary legislation and a Technical Memorandum were gazetted on 7 November 2008 and tabled in the Council on 12 November 2008.

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11. Regarding the Allowances to Jurors (Amendment) Order 2008, the Chairman said that it was to increase the rate of allowance and the maximum rate of additional allowance payable to jurors from \$280 to \$360. The rates were last revised in 1996. The Chairman further said that the Order would come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

12. In response to Dr Margaret NG's enquiry, Legal Adviser (LA) confirmed that the Order was concerned only with the increase in the rates of allowances payable to jurors.

13. As regards the Technical Memorandum for Allocation of Emission Allowances in respect of Specified Licences issued pursuant to the Air Pollution Control Ordinance, the Chairman said that it sought to allocate the total quantities of emission allowances for the three specified pollutants, namely sulphur dioxide, nitrogen oxides and respirable suspended particulates, to the power plants in Hong Kong for the year 2010 and beyond, and to set out the determination methods. The Panel on Environmental Affairs had been consulted on the final draft of the Technical Memorandum, and members had expressed various concerns.

14. Mr KAM Nai-wai considered it necessary to form a subcommittee to study the Technical Memorandum.

15. The Chairman proposed that a subcommittee be formed to study the Technical Memorandum in detail. Members agreed. The following Members agreed to join: Ms Audrey EU, Mr KAM Nai-wai, Ms Cyd HO and Miss Tanya CHAN.

16. Members did not raise any queries on the other item of subsidiary legislation.

(b) **Legal Service Division report on subsidiary legislation gazetted on 11 November 2008 and tabled in Council on 12 November 2008**
(*LC Paper No. LS 15/08-09*)

17. The Chairman said that only one item of subsidiary legislation, i.e. the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (the No. 2 Amendment Notice), was gazetted on 11 November 2008 and tabled in the Council on 12 November 2008. It sought to extend the suspension of the requirement for employers of all imported labour, including foreign domestic helpers (FDHs), to pay the Employees Retraining Levy (the Levy) from a period of two years to five years.

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18. The Chairman further said that a subcommittee had been formed to study the Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008 (the Amendment Notice) which provided for a two-year suspension of the Levy. The Subcommittee, chaired by Mrs Regina Ip, would make a report under agenda item VII(a). As both Notices were concerned with the period of suspension of the Levy, the Chairman suggested inviting the Chairman of the Subcommittee to report at that juncture to facilitate Members' consideration on the need for setting up a subcommittee to examine the No. 2 Amendment Notice. Members agreed.

19. Mrs Regina IP, Chairman of the Subcommittee, reported that the Subcommittee had held five meetings and had received public views on the Amendment Notice. She referred Members to the Subcommittee's report for details of its deliberations.

20. Mrs IP elaborated that the Amendment Notice sought to suspend the requirement for employers of FDHs and all other employers of labour imported under designated schemes to pay the Levy of \$400 per month for a period of two years. The main issues discussed by the Subcommittee included the length and scope of the Levy suspension, whether amendments to extend the Levy suspension period would have a charging effect, expenses incurred by employers in terminating and renewing contracts for FDHs in advance, impact of the advanced renewal of contracts arising from the Levy suspension on the rights of FDHs, minimum allowable wage of FDHs, and the role of the Employees Retraining Board and its annual expenditure.

21. Mrs IP further reported that some members considered that the Levy on employers of FDHs should be abolished, while some other members had expressed objection to it. Some members took the view that the Levy should be suspended until the accumulated Levy income and the interest earned were nearly depleted. In the course of its deliberations, the Subcommittee had considered amendments proposed by members, including her proposed amendments to suspend the Levy indefinitely, and the amendments proposed by Mr WONG Sing-chi, Mr LEE Wing-tat and Mr IP Kwok-him to extend the Levy suspension to the years 2047, 2018 and 2013 respectively. The Subcommittee had also agreed that she, as its Chairman, would move on behalf of the Subcommittee an amendment to suspend the Levy on employers of FDHs indefinitely.

22. Mrs IP further said that at its meeting on 11 November 2008, the Subcommittee was informed by the Administration that CE in Council had made the No. 2 Amendment Notice earlier that morning. The No. 2 Amendment Notice sought to suspend the requirement for all employers of FDHs and all other employers of imported labour to pay the Levy of \$400 per month for a period of five years and to repeal the Amendment Notice.

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23. The Chairman invited Members' views on whether they considered a subcommittee necessary to examine the No. 2 Amendment Notice.

24. Mrs Regina IP considered it necessary to form a subcommittee to study it.

25. The Chairman proposed that a subcommittee be formed to study the No. 2 Amendment Notice in detail. Members agreed. The following Members agreed to join: Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Miriam LAU, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat (as advised by Mr Albert HO), Mr Ronny TONG, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming and Mrs Regina IP.

26. The Chairman reminded Members that the deadline for amending the No. 2 Amendment Notice was 10 December 2008, or 7 January 2009 if extended by resolution.

27. Mr James TO sought clarification on whether the Amendment Notice was repealed by a resolution passed by LegCo.

28. At the invitation of the Chairman, LA said that the Amendment Notice was repealed by a provision in the No. 2 Amendment Notice gazetted on 11 November 2008, which had taken effect on the date of its publication in the Gazette.

29. Mr James TO said that it was rare for the Administration to repeal an item of subsidiary legislation in such a manner. He was concerned that should a resolution be passed by LegCo to repeal the No. 2 Amendment Notice, whether such repeal would have the effect of reviving the Amendment Notice.

30. At the invitation of the Chairman, LA said that in accordance with provisions in the Interpretation and General Clauses Ordinance (Cap. 1), should the No. 2 Amendment Notice be repealed, such repeal would not have the effect of reviving the Amendment Notice.

31. Mr James TO further enquired whether employers of FDHs and other imported labour would have to pay the Levy again should the No. 2 Amendment Notice be repealed.

32. At the invitation of the Chairman, LA said that it was the preliminary view of the Legal Service Division that should the No. 2 Amendment Notice be repealed, the Levy as specified in Schedule 3 to the Employees Retraining Ordinance (ERO) would remain at "\$0" as the "\$0" Levy had already come into effect.

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33. In response to Mr LEUNG Yiu-chung, LA further said that should the No. 2 Amendment Notice be repealed, the Levy as specified in ERO would remain at "\$0" until there were further legislative amendments.

IV. Further business for the Council meeting on 19 November 2008

Questions

(LC Paper No. CB(3) 135/08-09)

34. The Chairman said that Mr James TO had replaced his oral question and Dr LAM Tai-fai had given up the oral question slot allocated to him.

V. Business for the Council meeting on 26 November 2008

(a) Questions

(LC Paper No. CB(3) 136/08-09)

35. 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

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

(c) Government motion

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

(d) Members' motions

(i) Motion to be moved by Hon Audrey EU Yuet-mee

(Wording of the motion issued vide LC Paper No. CB(3) 145/08-09 dated 13 November 2008.)

38. The Chairman said that the subject of the motion to be moved by Ms Audrey EU was "Formulating a roadmap for a low carbon economy".

(ii) Motion to be moved by Hon Ronny TONG Ka-wah

(Wording of the motion issued vide LC Paper No. CB(3) 144/08-09 dated 13 November 2008.)

39. The Chairman said that the subject of the motion to be moved by Mr Ronny TONG was "Reforming financial regulators".

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40. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 19 November 2008.

VI Senior judicial appointments

(Director of Administration's letter dated 7 November 2008 to the Chairman of the House Committee issued to Members on 7 November 2008)

41. Referring to the Director of Administration's letter issued to Members on 7 November 2008, the Chairman said that CE had announced on 7 November 2008 of his acceptance of the recommendation of the Judicial Officers Recommendation Commission on the appointment of three non-permanent judges to the Court of Final Appeal.

42. The Chairman further said that should a subcommittee be formed to consider the recommended appointments, the Administration would give notice of the motion to seek the endorsement of LegCo of the recommended appointments, after the subcommittee had reported its deliberation to the House Committee. Should Members consider a subcommittee not necessary, the Administration could proceed to give notice of the motion.

43. Members did not raise objection to the recommended appointments.

VII. Report of Bills Committees and subcommittees

(a) **Report of the Subcommittee on Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008**
(LC Paper No. CB(2) 264/08-09)

44. The Chairman said that Mrs Regina IP, Chairman of the Subcommittee, had already reported under agenda item III(b).

(b) **Report of the Subcommittee on Road Traffic (Public Service Vehicles) (Amendment) Regulation 2008**
(LC Paper No. CB(1) 199/08-09)

45. The Chairman, in her capacity as Chairman of the Subcommittee, reported that the Amendment Regulation sought to give effect to changes in Lantau and urban taxis fares in line with the new policy on taxi fare structure for taxi fare to be "front-loaded and thereafter on a varying descending scale of incremental charges". According to the Administration, the new fare structure was developed and in general agreed upon by the taxi trade through a lengthy and in-depth deliberation process. The Chairman further reported that the

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Subcommittee had received views from representatives of the Lantau and urban taxi trade at one of its meetings. Members noted that the majority of the deputations which had submitted views to the Subcommittee were in support of the fare adjustments under the Amendment Regulation, while two of the deputations had either expressed objection or reservations.

46. The Chairman elaborated that the Subcommittee had expressed concern about the effectiveness of the new fare structure in reducing the room for discount gang activities and in restoring order in the taxi market, given that discount gangs might continue to offer discounts from the metered fares. The Subcommittee had also expressed concern that the existing legislation and enforcement did not provide sufficient deterrence against fare bargaining. Some members had urged the Administration to introduce legislation to ensure payment of metered fares. In response to members' concerns, the Administration had advised that it would study overseas experience regarding the regulation of charging taxi fares according to meters, consult the taxi trade to understand more their views and concerns, and report to the Panel on Transport in six months' time.

47. The Chairman further said that the Subcommittee was disappointed that the Administration had not agreed to work out the legislative proposals to prohibit fare bargaining within six months, or to provide a concrete timetable for the legislative proposals. In the course of the discussions, some members had considered proposing amendments to the Amendment Regulation.

48. The Chairman pointed out that Members had the right to propose amendments to the Amendment Regulation, the deadline for notice of which was 19 November 2008. She understood that some members had indicated that they would not move any amendments to the Regulation, while some had yet to decide on the matter. Should no amendment be proposed, there would not be any debate in the Council on the Amendment Regulation which was subject to the negative vetting procedure. Should this be the case, individual Members wishing to speak on the Amendment Regulation might seek the President's permission, under Rule 21(5) of the Rules of Procedure (RoP), to address the Council on it. However, no debate might arise on such an address, and an advance copy of the Member's speech would have to be provided to the President to enable him to decide whether the address might provoke a debate. Alternatively, a motion might be moved to adjourn the Council under Rule 16(4) of RoP to enable Members to debate on the subject matter. The duration of the adjournment debate should be within one and a half hours, and each Member might speak for up to five minutes in the debate. The Chairman added that Members had to decide at the House Committee meeting on whether they supported the holding of an adjournment debate at the Council meeting on 26 November 2008. She invited Members' views on the matter.

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49. Mr Ronny TONG said that as the regulation of charging taxi fares according to meters would require amendments to the Principal Ordinance, it would not be possible for Members to move amendments to that effect as this would be outside the scope of the Amendment Regulation. As such, he supported the proposal for moving a motion for adjournment at the Council meeting on 26 November 2008 to enable Members to debate on issues relating to the Amendment Regulation. He sought clarification on whether the deadline for giving notice of the motion for adjournment was the day of the House Committee meeting.

50. The Chairman said that Members had to decide at the House Committee meeting whether to support the proposal for moving the motion for adjournment, subject to no amendments being proposed to the Amendment Regulation by the deadline for notice on 19 November 2008. Should amendments be proposed to the Amendment Regulation, Members would have the opportunity to debate on it in the Council.

51. Mr Ronny TONG reiterated his support for the proposal of moving a motion for adjournment at the Council meeting on 26 November 2008.

52. In response to Ms Emily LAU, the Chairman said that the Amendment Regulation would take effect on 30 November 2008.

53. Ms Emily LAU said that many people, in particular taxi drivers, had expressed concern about the proposed taxi fare adjustments. She shared Mr Ronny TONG's view that legislative provisions should be put in place to ensure payment of metered fares. She was concerned that under the existing arrangement, no debate could be held in the Council on subsidiary legislation subject to negative vetting to which no amendment had been proposed, and Members who wished to debate on the relevant subsidiary legislation had to move a motion for adjournment at a Council meeting. She considered such an arrangement unsatisfactory, and requested that the matter be referred to the Committee on Rules of Procedure (CRoP) for consideration. In her view, as a standing arrangement, Members should have the opportunity to debate on subsidiary legislation subject to negative vetting and such debates should not be in the form of adjournment debates. As RoP currently did not provide for debates on subsidiary legislation, she supported the proposal for moving a motion for adjournment at the Council meeting on 26 November 2008 to enable Members to debate on issues relating to the Amendment Regulation.

54. Dr Margaret NG expressed support for a motion for adjournment to be moved at the Council meeting on 26 November 2008. She said that should amendments to the Amendment Regulation be proposed by Members by the deadline for giving notice of amendments, the notice on the motion for adjournment could be withdrawn. She recalled that CRoP had previously

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discussed procedures to facilitate debates on subsidiary legislation subject to negative vetting to which no amendment had been proposed. She sought confirmation on whether her understanding was correct.

55. At the invitation of the Chairman, SG said that CRoP had considered various options for facilitating debates to be held on subsidiary legislation subject to negative vetting to which no amendments had been proposed. After discussions, CRoP agreed that Members could make use of adjournment debates for such a purpose. To allow more time for Members to speak at adjournment debates, the relevant rule in RoP was amended in 2008 to extend the duration of the debate from one hour to one and a half hours. The matter could be revisited if considered necessary.

56. Dr Margaret NG did not consider extending the duration of adjournment debates a satisfactory or logical solution to address Members' concern.

57. Members agreed that the matter be referred to CRoP for consideration.

58. The Chairman said that she noted that many Members were concerned about the proposed taxi fare adjustments, and she had discussed with the President in the morning of the House Committee meeting about the proposal of moving a motion for adjournment at the Council meeting on 26 November 2008. She had suggested to the President to consider exercising his discretion to extend the duration of the adjournment debate beyond one and half hours, to enable all Members wishing to speak at the adjournment debate to do so. The speaking time limit for each Member could be set at five minutes. She further said that should Members agree to the proposal, there would be two debates on Members' motions with no legislative effect and one adjournment debate at the Council meeting on 26 November 2008.

59. In response to Ms Emily LAU, the Chairman said that designated public officers would have a total speaking time of 15 minutes to provide a response to Members' views at the adjournment debate.

60. Members supported the proposal for the Chairman of the Subcommittee to move a motion for adjournment at the Council meeting on 26 November 2008 for the purpose of debating the issue of adjustment in the fares for the hiring of Lantau and urban taxis, subject to no amendments being proposed to the Amendment Regulation. Members agreed that the President be requested to exercise his discretion to extend the duration of the adjournment debate beyond one and half hours, to enable all Members wishing to speak at the adjournment debate to do so for a maximum of five minutes each. Members also agreed to recommend to the President the holding of the adjournment debate in addition to two other debates on Members' motions with no legislative effect at that Council meeting.

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VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 263/08-09)

61. The Chairman said that there was one Bills Committee, five subcommittees under the House Committee and one subcommittee under a Panel in action.

IX. Any other business

62. There being no other business, the meeting ended at 3:00 pm.

Council Business Division 2
Legislative Council Secretariat
19 November 2008