

立法會

Legislative Council

LC Paper No. CB(2) 382/08-09

Ref : CB2/H/5/08

House Committee of the Legislative Council

Minutes of the 8th meeting held in the Legislative Council Chamber at 2:30 pm on Friday, 28 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
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
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
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, 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 Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP

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 Becky YU	Chief Council Secretary (1)1
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Mr Stephen LAM	Assistant Legal Adviser 4
Mr KAU Kin-wah	Assistant Legal Adviser 6
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Mr Arthur KAN	Legislative Assistant (2)7

Action

**I. Confirmation of the minutes of the 7th meeting held on 21 November 2008
(LC Paper No. CB(2) 342/08-09)**

The minutes were confirmed.

II. Matters arising

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

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

2. The Chairman said that she had conveyed again to CS Members' request for increasing the frequency of CE's Q & A Sessions to once a month, and for extending the duration of each Session to two hours. She had also drawn CS's attention to the fact that this was the third time she had conveyed Members' request. CS had informed her that he had forwarded Members' request to CE's Office on the two previous occasions and would convey the message again.

3. Ms Emily LAU suggested that the Chairman could give CE a call requesting him to respond to Members' request during the lunch banquet to be hosted by him for Members the following Monday.

4. The Chairman said that she would relay Ms Emily LAU's view to the Director of Administration.

Action

Provision of papers by the Administration for discussion at meetings of committees

5. Ms Audrey EU expressed concern about the late provision of papers by the Administration for discussion at meetings of committees since the commencement of the Fourth Legislative Council (LegCo). She requested the Chairman to relay her concern to CS and to ask CS to remind the policy bureaux to adhere to the relevant deadlines for provision of papers.

6. The Chairman asked for specific examples on the late provision of papers by the Administration to facilitate her discussion with CS.

7. Ms Audrey EU said that a number of policy bureaux had been late in providing papers to committees. She said that committee clerks could provide information in this regard.

8. Dr Margaret NG echoed the view that the Secretariat could help to collate such information.

9. The Chairman requested the Secretariat to provide the relevant information.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 21 November 2008 and tabled in Council on 26 November 2008

(LC Paper No. LS 18/08-09)

10. The Chairman said that four items of subsidiary legislation were gazetted on 21 November 2008 and tabled in the Council on 26 November 2008.

11. Members did not raise any queries on these four items of subsidiary legislation.

12. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 17 December 2008.

IV. Further business for the Council meeting on 3 December 2008

Questions

(LC Paper No. CB(3) 180/08-09)

13. The Chairman said that Mr LEE Wing-tat had replaced his oral question and Mr James TO had replaced his written question.

V. Business for the Council meeting on 10 December 2008

(a) Questions

(LC Paper No. CB(3) 181/08-09)

14. 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

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

(c) Government motions

Three proposed resolutions to be moved by the Secretary for Security under the Mutual Legal Assistance in Criminal Matters Ordinance relating to:

(i) the Mutual Legal Assistance in Criminal Matters (Indonesia) Order;

(ii) the Mutual Legal Assistance in Criminal Matters (Japan) Order; and

(iii) the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order

(Wording of the proposed resolutions issued vide LC Paper No. CB(3) 165/08-09 dated 21 November 2008.)

(LC Paper No. LS 17/08-09)

16. The Chairman said that the three proposed resolutions were for seeking LegCo's approval of the three Orders made under the Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance). She added that under section 4(7) of the Ordinance, LegCo's power to amend the orders was confined to repealing them only.

Action

17. Mr James TO considered it necessary to form a subcommittee to study the three proposed resolutions.

18. The Chairman proposed that a subcommittee be formed to study the three proposed resolutions in detail. Members agreed. The following Members agreed to join: Dr Margaret NG, Mr James TO and Mr LAU Kong-wah.

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

(d) **Members' motions**

(i) **Motion on "Appointment of a select committee"**

(Wording of the motion issued vide LC Paper No. CB(3) 179/08-09 dated 26 November 2008.)

20. The Chairman said that as agreed at the last House Committee meeting, Ms LI Fung-ying, Chairman of the Subcommittee on Preparatory Work for the Appointment of the Select Committee to Inquire into Matters relating to the Post-service Employment of Mr LEUNG Chin-man, would move the above motion at the Council meeting.

21. The Chairman reminded Members that the speaking time limit was 15 minutes.

(ii) **Motion on "Promoting infrastructure development"**

(Wording of the motion issued vide LC Paper No. CB(3) 185/08-09 dated 27 November 2008.)

22. The Chairman said that the above motion would be moved by Ir Dr Raymond HO and the wording of the motion had been issued to Members.

(iii) **Motion to be moved by Hon Starry LEE Wai-king**

(Wording of the motion issued vide LC Paper No. CB(3) 186/08-09 dated 27 November 2008.)

23. The Chairman said that the subject of the motion to be moved by Ms Starry LEE was "Raising the limit of university places for publicly-funded bachelor's degree programmes".

24. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 3 December 2008.

VI. Report of Bills Committees and subcommittees

(a) Report of the Subcommittee on Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (LC Paper No. CB(2) 346/08-09)

25. Mrs Regina IP, Chairman of the Subcommittee, reported that the Subcommittee had completed scrutiny of the Notice. She referred Members to the Subcommittee's report for details of its deliberations.

26. Mrs IP further reported that the majority of members agreed that she should move an amendment to the Notice on behalf of the Subcommittee at the Council meeting on 10 December 2008 to extend the suspension of the Employees Retraining Levy (the Levy) on employers of foreign domestic helpers indefinitely. Mr LEE Wing-tat had indicated that he might move an amendment to the effect that the reinstatement of the Levy from \$0 to \$400 with effect from 1 August 2013 would be subject to a resolution passed by LegCo.

27. The Chairman said that as the Subcommittee would move an amendment, there would be a debate on the Notice at the Council meeting on 10 December 2008. She reminded Members that the deadline for giving notice of amendments was Wednesday, 3 December 2008.

28. The Chairman further said that the Secretariat had issued a circular to inform Members that should the President be of the opinion that it was unlikely that the business on the Agenda of the meeting could be finished by about midnight on 10 December 2008, he would suspend the meeting at about 10:00 pm and order that it be resumed on 11 December 2008 at 9:00 am sharp for the continuation of business.

(b) Report of the Subcommittee on Technical Memorandum for Allocation of Emission Allowances in respect of Specified Licences

29. Ms Audrey EU, Chairman of the Subcommittee, reported that the Technical Memorandum (TM) sought to allocate the total quantities of emission allowances for each type of specified pollutant to the power plants in Hong Kong. The Bills Committee formed to study the Air Pollution Control (Amendment) Bill 2008 in the Third LegCo had also discussed issues relating to the TM.

30. Ms EU elaborated that the Subcommittee held a meeting on 25 November 2008. Given the significance of the TM, members considered it necessary to extend its scrutiny period to 7 January 2009 to allow sufficient time for the Subcommittee to receive public views. However, the

Action

Administration advised that it was aiming at bringing the TM into operation before the end of 2008 to facilitate the renewal of licence for the Lamma Power Station (LPS) before the end of the year. The Administration said that the validity of a specified licence should be for a period of not less than two years. The proposed extension of scrutiny period might have the effect of non-application of the TM to the new licence of LPS which would commence on 1 January 2009 upon renewal. This would have an adverse impact on the achievement of the 2010 emission reduction targets.

31. Ms EU further reported that some members had expressed dissatisfaction and had proposed to amend the TM by adding an expiry provision ('sunset' clause) which, as advised by the Subcommittee's legal adviser, was legally in order. However, having regard to the undertaking made by the Secretary for the Environment for a review of the TM to be conducted within two years after the coming into operation of the first TM, as relayed in the Administration's letter to the Subcommittee dated 26 November 2008, the Subcommittee had agreed not to move an amendment to add an expiry provision. Nevertheless, it could not be ruled out that individual Members might propose an amendment to that effect. Ms EU added that the deadline for giving notice of amendments, if any, to the TM was Wednesday, 3 December 2008.

32. The Chairman said that the Subcommittee would provide a written report for the next House Committee meeting.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 343/08-09)

33. The Chairman said that there was one Bills Committee, five subcommittees under the House Committee (i.e. two subcommittees on subsidiary legislation/other instruments and three subcommittees on other issues) and four subcommittees under Panels in action.

VIII. Proposal for the appointment of a subcommittee under the House Committee to monitor the West Kowloon Cultural District project

(LC Paper No. CB(2) 345/08-09)

34. Mr IP Kwok-him, Chairman of the joint meeting of the Panel on Development and Panel on Home Affairs, said that the two Panels had held a joint meeting on 14 November 2008 to discuss the development of the West Kowloon Cultural District (WKCD) project since the enactment of the West Kowloon Cultural District Development Authority (WKCDA) Ordinance and the way forward for monitoring the project. Members urged the Administration to expedite the implementation of the WKCD project to create

Action

more employment opportunities amidst the financial tsunami. Members also expressed concern over the appointment of the WKCDA Board, as well as a number of issues relating to the implementation of the WKCD project.

35. Mr IP elaborated that in consideration of the high expectation of the community on the WKCD project, the important impact of WKCD on Hong Kong's long term development especially on the cultural life of the populace, and the significant public resources involved, members considered that LegCo should continue to monitor the project vigilantly. In considering the way forward to monitor the WKCD project, members had examined two options, viz. the appointment of a joint subcommittee under the Panel on Development and Panel on Home Affairs, or a subcommittee under the House Committee as proposed by Mr Alan LEONG. Mr IP further said that in respect of the first option, members noted that since the appointment of the former Subcommittee on WKCD Development (the former Subcommittee), the Rules of Procedure (RoP) and the House Rules (HR) had been amended in October 2005 to provide for the appointment of a joint subcommittee by two or more Panels to study any matter of common interest to the relevant Panels. Some members considered the option of appointment of a subcommittee under the House Committee preferable for the reasons set out in paragraph 10 of the paper.

36. Mr IP added that after deliberation, members decided to take a vote on the option of the appointment of a subcommittee under the House Committee. As the option was carried after voting, members of the two Panels agreed to forward the proposal to the House Committee for endorsement.

37. Mr Paul CHAN declared interest that he was a member of the Board of WKCDA. He said that he would not participate in the discussions under this agenda item to avoid any role conflict.

38. Mr Alan LEONG considered it appropriate for a subcommittee to be appointed under the House Committee for a number of reasons. He explained that as the former Subcommittee was appointed under the House Committee to study issues relating to WKCD on behalf of all 59 Members of the House Committee, the same arrangement should be followed to continue to monitor the work of the WKCD project. In addition, given that the Administration had made a number of undertakings to LegCo as a whole regarding the WKCD project during its past discussions with the Subcommittee and the Bills Committee on WKCDA Bill, the appointment of a subcommittee under the House Committee would provide a more appropriate forum for the Administration to revert back on the progress on its delivery of those undertakings. Furthermore, a subcommittee appointed under the House Committee would enable wider participation by LegCo Members, including those who had joined the former Subcommittee but were not members of the two Panels concerned.

Action

39. Mr LAU Kong-wah said that he had taken note of precedent cases on the appointment of subcommittees under the House Committee. As a matter of principle, issues falling within the purviews of Panel(s) should be followed up by the Panel(s) concerned through the appointment of a subcommittee or, where appropriate, a joint subcommittee under the Panel(s). He pointed out that when the former Subcommittee was appointed under the House Committee in the Third LegCo, there was wide public concern on the single development approach and the mode of operation for WKCD. The former Subcommittee had undertaken a lot of work, including a duty visit to acquire first-hand information on the experience of other countries in similar projects. The former Subcommittee's work had borne fruit, and the Administration had taken on board a number of recommendations proposed by the Subcommittee. Mr LAU pointed out that the current situation was very different in that the WKCD Ordinance had been enacted and the Administration had embarked on the setting up of the Board of the WKCD. Following the establishment of WKCD, he envisaged that the extent of involvement of LegCo would be different. Having regard to all these factors, he considered it more appropriate for the WKCD project to be followed up by a joint subcommittee appointed under the two Panels.

40. The Chairman drew Members' attention to HR 20(j)(ii) and 20(k) relating to the appointment of subcommittees under the House Committee to study policy issues. HR 20(j)(ii) provided that the House Committee might appoint a subcommittee to assist its consideration of an issue of public concern which fell outside the purview of Panels or any other matter relating to the business of the Council. The rule could be interpreted in such a way that it might not be appropriate for the House Committee to appoint a subcommittee to deal with matters falling within the purview of one or more Panels. She invited Members' views on the interpretation of HR20(j)(ii), having regard to the possibility that similar proposals for the appointment of subcommittees on policy issues under the House Committee might be made in future.

41. At the invitation of the Chairman, Legal Adviser (LA) said that HR were drawn up by the House Committee to provide guidelines relating to its practice and procedure. The House Committee had appointed subcommittees to assist it in the consideration of matters relating to the business of the Council. When considering proposals for the appointment of such subcommittees under the House Committee in the past, the House Committee would have taken into account the House Rules cited by the Chairman.

42. Mr Tommy CHEUNG said that Members belonging to the Liberal Party considered it more appropriate for the two Panels to appoint a joint subcommittee as the matter fell within their purviews. Furthermore, with the establishment of WKCD, it would be the corresponding body of the joint

Action

subcommittee on the WKCD project. The present situation was different from the case of the former Subcommittee which then did not have a corresponding policy bureau and had thus been appointed under the House Committee.

43. Mr LEE Wing-tat said that Members belonging to the Democratic Party supported the appointment of a subcommittee under the House Committee to follow up the WKCD project. He agreed with the need to appoint a subcommittee to continue to monitor the project vigilantly, including the work of the WKCD in implementing the project, the policy on the promotion of arts and culture, as well as the planning and development of WKCD. Should the matter be followed up by the two Panels concerned, the meeting schedule and discussion items would have to be decided by both Panels. In his view, a subcommittee appointed under the House Committee was preferable as it would provide a dedicated forum for LegCo Members to monitor the WKCD project. He disagreed with Mr LAU Kong-wah's view that the proposed subcommittee would not have much work to do. He pointed out that the former Subcommittee had put forward a long list of recommendations for the Administration's consideration, many of which had yet to be followed up by the Administration. In his view, significant follow-up work was required.

44. Mr LAU Kong-wah clarified that he had not said that the proposed subcommittee would not have much work to do. What he meant was that the focus of the proposed subcommittee would be very different from that of the former Subcommittee. Indeed, he was supportive of the appointment of a joint subcommittee under the Panels concerned. While sharing Mr LEE Wing-tat's view on the need to follow up the policy on the promotion of arts and culture in connection with the project, he pointed out that such policy fell squarely within the remit of the Panel on Home Affairs. In line with HR 20(j)(ii), matters which were within the purview of Panel(s) should be handled by the Panel(s) concerned. He further remarked that a subcommittee appointed under the two Panels would provide a more dedicated forum for following up the project, as members of the two Panels had all along been dedicated to the relevant policy areas.

45. Dr Margaret NG said that she was well aware that political considerations were at play in deliberating the proposal for the appointment of the subcommittee. From the perspective of the interpretation of the relevant rules, she considered that HR 20(j)(ii) was an enabling and not a restrictive provision. She concurred with the view that the House Committee should appoint subcommittees to consider issues which Panels could not tackle. She pointed out that her prime concern about the WKCD project was the cultivation of a political culture arising from the establishment of WKCD. Its establishment was innovative as it was a dedicated statutory body established to implement a project of considerable public interests, with the need for public

Action

engagement from planning stage to implementation. Should WKCD prove to be successful, such an institutional arrangement could be applied to other projects in future. In view of the time constraint in the scrutiny of the WKCD Bill, it was all the more important for LegCo to set up a subcommittee to monitor the work of WKCD, as well as the setting up of consultative committees under WKCD including whether the appointment of members to such committees was in line with the Nolan Principle. She stressed that development of arts and culture were but only two aspects of the project and, as such, it was more appropriate for the House Committee to appoint a subcommittee to monitor the work of WKCD.

46. While concurring with the view that HK20(j)(ii) was an enabling provision, Mr Paul TSE considered it necessary to clarify the criteria for the appointment of subcommittees under the House Committee. He said that as a new Member, he needed more information on the reasons for having appointed the former Subcommittee under the House Committee and not under the relevant Panels.

47. The Chairman said that the former Subcommittee was appointed under the House Committee as RoP then did not provide for the appointment of a joint subcommittee by two or more Panels to study matters straddling the policy areas of more than one Panel, and the only way to do this was by the appointment of a subcommittee under the House Committee. RoP and HR had subsequently been amended in October 2005 to provide for the appointment of a joint subcommittee by two or more Panels to study any matter of common interest to the relevant Panels.

48. Mr Paul TSE sought clarification on the difference between subcommittees under the House Committee and under Panels in terms of servicing by the LegCo Secretariat and efficiency of work.

49. The Chairman said that there was no difference in terms of the servicing of the subcommittees by the Secretariat.

50. At the invitation of the Chairman, Secretary General (SG) confirmed the Chairman's understanding. She added that irrespective of whether the subcommittee was appointed under the House Committee or the Panels concerned, it would be serviced by the same team of Secretariat staff and the work involved was the same.

51. Mr James TO declared interest as the Deputy Chairman of the former Subcommittee. He disagreed with Mr LAU Kong-wah's view that a different approach should be adopted for monitoring the WKCD project in the current term on the ground that it had progressed to a different stage. Having regard to the high expectations of the public on the project and on LegCo, he

Action

considered that it was incumbent upon LegCo to continue to monitor the project vigilantly, in particular in respect of the work of WKCDA entrusted with the task to implement the project. As the former Subcommittee was appointed under the House Committee and given that there were no practical differences between the appointment of a subcommittee under the House Committee and the Panels concerned, he considered it more appropriate to follow the same arrangement in the Fourth LegCo to provide continuity and avoid causing any confusion to the public. He further said that whether the subcommittee was appointed under the House Committee or the Panels concerned would not make any difference to the Administration. He expressed concern that at the joint Panel meeting, some members had taken the view that it was not necessary to appoint a subcommittee to follow up the project. He appealed to Members to support the proposal for the appointment of the subcommittee under the House Committee to facilitate the early start of the monitoring work on the part of LegCo.

52. Ms Emily LAU shared the view that a subcommittee should be set up expeditiously to follow up the implementation of the WKCD project. She was a member of both Panels concerned and had attended the joint Panel meeting on 14 November 2008. During the meeting, CS had indicated explicitly that it was the Administration's view that the subcommittee should be appointed under the Panels. She said that the major difference between the appointment of the subcommittee under the House Committee and the Panels was that for the former, non-Panel members could join and there could be wider participation by LegCo Members, whereas, for the latter, the membership would be restricted to members of the relevant Panels only. The membership of the subcommittee would in turn impact on the election of its chairman and deputy chairman. As the former Subcommittee was appointed under the House Committee, she considered that the same arrangement should be followed in the Fourth LegCo in monitoring the work of the WKCD project. She did not subscribe to Mr LAU Kong wah's view that the proposed subcommittee did not have much work to do. On the contrary, in view of the huge sum of public money involved of some \$20 billion, she considered that many issues had to be followed up by the proposed subcommittee. To facilitate Members' consideration, she sought clarification on the differences between the appointment of the subcommittee under the House Committee and under the Panels concerned.

53. The Chairman said that SG had explained that there would be no difference between the two options in terms of the servicing of the subcommittee by the Secretariat. As she had mentioned earlier, the former Subcommittee was appointed under the House Committee because RoP then did not provide for the appointment of joint subcommittees under two or more Panels. Should Members take the view that one of the considerations to be taken into account in the appointment of subcommittees under the House

Action

Committee was the need to widen participation by LegCo Members, amendments to HR 20(j)(ii) might be required. She sought Members' views in this regard.

54. In response to Ms Emily LAU, the Chairman reiterated that in so far as the servicing of the subcommittee by the Secretariat was concerned, there would be no difference between the two options. However, the membership of the subcommittee would be different under the two options. The Chairman stressed that she did not have any inclinations towards either of the two options, and her sole concern was the need to clarify the criteria for the appointment of subcommittees under the House Committee for future reference.

55. Ms Emily LAU considered the difference in membership size an important distinction between the two options. She sought clarification on whether it was the Chairman's view that the proposal for the appointment of a subcommittee under the House Committee on the WKCD project was inconsistent with HR (j)(ii).

56. The Chairman said that in her view, the proposal was seemingly not in line with HR 20(j)(ii). The rule provided that the House Committee might appoint a subcommittee to assist its consideration of an issue of public concern which fell outside the purview of Panels, and the membership size of a subcommittee was not one of the considerations set out therein.

57. Ms Emily LAU said that when the proposal for the appointment of a subcommittee under the House Committee on the WKCD project was discussed and put to a vote at the joint Panel meeting, members had not been told that the proposal was inconsistent with HR 20(j)(ii). She considered it important to clarify whether the proposal was indeed inconsistent with HR 20(j)(ii).

58. The Chairman said that she had invited Members' views on HR 20(j)(ii) as LA had drawn her attention to the rule at the pre-meeting briefing held in the morning of the House Committee meeting. She reiterated that she did not have any inclinations towards either of the two options.

59. At the invitation of the Chairman, LA apprised Members of the House Committee's role and its practice and procedure as provided for in RoP and HR. LA said that the House Committee comprised all Members except the President. In accordance with RoP 75(11), the House Committee might consider, in such manner as it thought fit, any item relating to the business of the Council. The House Committee was also charged with other functions. For instance, in terms of its relationship with Panels, the formation of new Panels and their terms of reference should be recommended by the House Committee for the Council's approval. The House Committee had all along functioned primarily

Action

as a committee responsible for such matters as referring a policy issue or a piece of legislation to the relevant committee for consideration, and it seldom undertook studies on policy matters directly. HR 20(j) provided for the appointment of subcommittees under the House Committee, and the considerations to be taken into account in making such appointments were set out in HR 20(j)(i) and (ii). From the literal perspective, the rule might be open to different interpretations. However, in interpreting HR, it was important to bear in mind that they were not statutory provisions. Rather, they were guidelines made by the House Committee to complement RoP and to provide for those practices which were agreed upon by Members as to how certain business of the Council and its committees should be considered. As such, the past practice and procedure of the House Committee was an important consideration in deciding how HR 20(j)(i) and (ii) should be interpreted. He recalled that both before and after the amendment of RoP and HR to provide for the appointment of joint subcommittees under Panel(s), subcommittees had been appointed under the House Committee to study matters which fell within the purview of Panels, and all such decisions were made by the House Committee after detailed discussions.

60. Dr PAN Pey-chyou recalled that a few weeks ago, similar discussions were held at a House Committee meeting on the proposal for the appointment of a subcommittee under the House Committee on assistance to small and medium enterprises. During the discussion, he had expressed the view that, in the light of the far-reaching consequences of the issue, a subcommittee should be appointed under the House Committee to enable wider participation of LegCo Members in following up the matter. After explanation by the Chairman and some other Members, he was given to understand that there was a well-established principle that matters falling within the purview of Panel(s) should be handled by the Panel(s) concerned. He agreed that such a principle should be respected and adhered to. However, he noted that Members who had previously supported strict adherence to the principle had expressed very different views at the current meeting. As a new Member, he found the operation of LegCo confusing. He also said that in considering the way forward to monitor the WKCD project, Members should not look back to the past.

61. Mrs Sophie LEUNG echoed the views of Dr PAN Pey-chyou. She considered it necessary to appoint a subcommittee to follow up the WKCD project and had no strong views on whether it should be appointed under the House Committee or the Panels. She drew Members' attention to paragraph 9 of the paper about the amendment of RoP and HR to provide for the appointment of a joint subcommittee by two or more Panels. She said that the former Subcommittee was appointed the House Committee probably because of the absence of such provisions in RoP and HR then. She recalled that when discussing the proposal for the appointment of a subcommittee on small and

Action

medium enterprises under the House Committee, some Members had considered it not necessary to appoint the subcommittee under the House Committee as any Members could join the relevant discussions of the Panel on Commerce and Industry. However, at the current meeting, there was a view that the subcommittee on WKCD should be appointed under the House Committee to allow wider participation by Members. She reiterated that she had no strong view on the appointment of a subcommittee provided that it could work effectively.

62. Prof Patrick LAU considered it necessary to appoint a subcommittee to follow up the WKCD project, and said that he had no strong view on whether it should be appointed under the House Committee or Panels. He sought clarification on the application of HR 26 concerning the quota of subcommittees on policy issues in operation to joint subcommittees under Panels, and the membership of joint subcommittees under Panels.

63. The Chairman said that HR 26 applied to subcommittees appointed under HC and Panels alike. However, since the quota of eight had not yet been reached, this should not be an issue of concern.

64. Prof Patrick LAU further sought clarification on whether non-Panel members could join the joint subcommittee appointed under the two Panels.

65. At the invitation of the Chairman, Assistant Secretary General 2 said that should non-Panel members wish to join the Panel(s) in order to join the joint subcommittee, they had to apply for late membership of the Panel(s) under HR 23. If the ground for application for late membership was indisposition, or absence from Hong Kong, during the time when Members should signify membership, it was for the Chairman of the relevant Panel to decide whether the application should be accepted. Other than the grounds of indisposition and absence from Hong Kong, any applications for late membership should be decided by the relevant Panel.

66. Dr Margaret NG disagreed with the view that the appointment of the former Subcommittee under the House Committee in the Third LegCo was primarily because RoP then did not provide for the appointment of joint subcommittees under two or more Panels. Dr NG said that wide public interest at stake was one of the main reasons for its appointment under the House Committee. Indeed, the purview of the 18 Panels had covered all policy areas. Theoretically, any issue of public concern could be handled within the context of one or more Panels. In her view, HR 20 (j)(ii) should be interpreted in such a way that Members should deal with an issue of public concern within the existing structure as far as practicable. However, where warranted, Members should and could deal with an issue of concern by a subcommittee under the House Committee. She considered it necessary to

Action

appoint a subcommittee under the House Committee to follow up the implementation of the WKCD Ordinance as the matter did not fall within the purview of any particular Panel. Dr NG further said that it was undesirable for a Member who had no interest in any other areas of study of the Panels concerned to apply for late membership of the Panel(s) solely for the purpose of joining the joint subcommittee.

67. Mr Paul TSE considered it necessary to clarify the criteria for the appointment of subcommittees under the House Committee to avoid disputes in future. He sought information on precedent cases where an issue of public concern which fell within the purview of Panel(s) had been handled by a subcommittee under the House Committee.

68. At the invitation of the Chairman, SG said that in the Third LegCo, a total of six subcommittees on policy issues had been appointed under the House Committee. These included, for example, the Subcommittee on Combating Poverty, the Subcommittee on the Provision of Boarding Places, Senior Secondary Education and Employment Opportunities for Children with Special Educational Needs, and the Subcommittee on WKCD Development which were appointed before the making of the provision for the appointment of joint subcommittees under Panels in October 2005. Thereafter, two such subcommittees had been appointed under the House Committee. They were the Subcommittee to Study the Administration's Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008 and the Subcommittee to Study the Transport Needs and Provision of Concessionary Public Transport Fares for Persons with Disabilities. In considering the proposals for the appointment of these subcommittees under the House Committee, Members had discussed whether the subject matters could be dealt with by the relevant Panels but decided that subcommittees under the House Committee should be appointed.

69. Mr CHAN Kam-lam said that he had also become very confused. On the one hand, members of the pan-democratic camps had requested the downsizing of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Lehman Brothers Subcommittee). On the other hand, Ms Emily LAU said that more members would be able to join the subcommittee to follow up the WKCD project should it be appointed under the House Committee. In his view, the Chairmen of the two Panels were diligent and were ready to convene special meetings to follow up the subject if necessary. Any members could attend the special meetings to participate in the discussions and monitor the work of WKCD. He did not subscribe to the view that it was necessary to appoint a subcommittee under the House Committee to monitor the implementation of the WKCD Ordinance. Should this argument be valid, then LegCo would have to set up numerous subcommittees to monitor the implementation of the

Action

large number of ordinances enacted. All along, the area of work concerned had been followed by the relevant Panels. He asked whether the matter had to be followed up in the context of a subcommittee or whether it could be dealt with in special meetings of the relevant Panels.

70. Ms Emily LAU refuted the claim regarding confusion. She said that the issue of membership raised in the context of the Lehman Brothers Subcommittee was that it had been authorized to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). All along, the principle had been clear that the membership of a committee with powers to summons should be limited. The Lehman Brothers Subcommittee had a large membership size because it had not been expected to be conferred with such powers. The Lehman Brothers Subcommittee had a strange combination of the characteristics of committees. It was neither a select committee nor a subcommittee in the conventional sense.

71. Mr CHAN Kam-lam enquired whether subcommittees under Panels could be authorized to exercise the powers under Cap. 382.

72. The Chairman said that the question raised by Mr CHAN Kam-lam was not relevant to the matter under discussion. He should make a formal proposal for discussion at the House Committee should he so wish.

73. Mr LEUNG Kwok-hung said that LegCo should have agreed to the proposal for the appointment of a select committee to study issues relating to the Lehman Brothers-related minibonds in the first place, and the present strange situation would not then have existed. In his view, any mechanism that could facilitate the monitoring of the work of the Administration by LegCo should be adopted. The appointment of a subcommittee under the House Committee to follow up the implementation of the WKCDA Ordinance was necessary as many issues of importance had not been provided therein and a substantial amount of resources were involved. Should the subcommittee be appointed under the Panels, it would deprive those Members who were not members of the two Panels the right to monitor the work of the Administration in this regard.

74. Mr IP Kwok-him said that there was no dispute on the need to set up a subcommittee to monitor the work of the Administration and WKCDA. As provisions had specifically been made in HR to provide for the appointment of joint subcommittees under Panels, he considered it appropriate for the matter to be followed up by a joint subcommittee under the Panels for the smooth conduct of LegCo business. He dispelled any misconception that a restricted membership of the joint subcommittee under Panels would facilitate the election of certain members to be its chairman. He stressed that Members should not consider the proposal under discussion from that perspective.

Action

75. Mr Alan LEONG said that the focus of discussions, so far, was whether the appointment of the proposed subcommittee under the House Committee would set an inappropriate precedent under HR 20 (j)(ii). He pointed out that such an appointment would not set a precedent as two subcommittees had already been appointed under the House Committee after the making of the provision in HR for the appointment of joint subcommittees under Panels. Moreover, the proposed subcommittee would be a bad choice for setting a precedent for HR 20 (j)(ii) because a similar subcommittee had been appointed under the House Committee in the Third LegCo. He said that it would be odd if LegCo Members who wished to monitor the project had to apply for late membership of the Panels in the first place in order to join the joint subcommittee. He highlighted the fact that the former Subcommittee had produced three reports on the multi-billion dollar WKCD project, and the reports had been endorsed unanimously by LegCo Members. He was of the view that the appointment of a subcommittee under the Panels would be a downgrading.

76. The Chairman did not share the view that the appointment of a subcommittee under Panels instead of the House Committee should be interpreted as downgrading the standing of the subcommittee.

77. Dr Margaret NG said that downgrading should be understood as a reference to the scale of the subcommittee.

78. Mr Alan LEONG clarified that the former Subcommittee was appointed under the House Committee and its reports represented the consensus of all 59 Members of the House Committee. Should a joint subcommittee be appointed under the two Panels, its reports would be the joint effort and consensus of at most 31 members which was the total membership size of the Panels. The subcommittee would be downgraded in that sense. He added that it was inappropriate for CS to have said at the joint meeting of the two Panels that the subcommittee should be appointed under the Panels. He considered that the Executive Authorities had overstepped their position as it was the prerogative of LegCo to decide how it should conduct its business. He speculated that CS might intend to frustrate the possibility of the 59 Members of the House Committee of reaching a consensus on the matter. He considered it inappropriate for CS to do so.

79. Mr LAU Kong-wah also did not share the view that the appointment of a subcommittee under the Panels would downgrade the standing of the subcommittee. He said that the proposal should be dealt with in the context of HR 20 (j)(ii) in that the House Committee should only appoint a subcommittee to consider an issue of concern which fell outside the purview of Panels. He also said that the Democratic Alliance for the Betterment and Progress of Hong

Action

Kong supported the appointment of a joint subcommittee under the Panels to follow up the WKCD project.

80. Mr IP Kwok-him said that at the joint meeting of the Panels, members had agreed to the appointment of a subcommittee to monitor the WKCD project.

81. The Chairman put to vote the proposal for the appointment of a subcommittee to monitor the WKCD project under the House Committee. Mr Alan LEONG requested to claim a division.

The following Members voted in favour of the proposal -

Mr Albert HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss CHAN Tanya, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mrs Regina IP and Mr Paul TSE

(20 Members)

The following Members voted against the proposal -

Ir Dr Raymond HO, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou

(20 Members)

The following Member abstained -

Dr Priscilla LEUNG

(1 Member)

82. The Chairman declared that 20 Members voted for and 20 Members against the proposal, and one Member abstained. She said that since it was a tie vote, she would exercise her casting vote which would be to negative the proposal. The Chairman declared that the proposal was voted down.

83. In response to Dr Margaret NG, the Chairman said that in accordance with RoP 79A(1), the Chairman of a committee should not exercise the casting vote in such a way as to produce a majority vote in favour of the question put.

Action

84. At the invitation of the Chairman, LA confirmed and reiterated the provision of RoP 79A(1).

85. The Chairman said that it would be a matter for the Panels to decide on the appointment of a joint subcommittee under the Panels.

IX. Proposed practice and procedure for the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

(LC Paper No. CB(1) 292/08-09)

86. Ir Dr Raymond HO, Chairman of the Subcommittee, invited Members to endorse the proposed practice and procedure to be adopted by the Subcommittee pursuant to RoP 75(18) as set out in the Annex to the paper.

87. Ir Dr HO elaborated that on 17 October 2008, the House Committee endorsed the setting up of the Subcommittee and its terms of reference. Pursuant to the decision of the House Committee, he, as the Subcommittee Chairman, had moved a motion at the Council meeting on 12 November 2008 seeking authorization for the Subcommittee to exercise the powers conferred by section 9(1) of Cap. 382 for the purpose of performing its functions. The motion was passed.

88. Ir Dr HO further said that as procedures applicable to the exercise of the summoning powers conferred by section 9(1) of Cap. 382 were not set out in HR, the Secretariat had assisted the Subcommittee in drawing up its proposed practice and procedure by making reference to the practices and procedures of previous Panels and select committees which were authorized by the Council to conduct inquiries with summoning powers conferred by section 9(1) of Cap.382. At the meeting held on 25 November 2008, the Subcommittee considered and agreed that the proposed practice and procedure should be forwarded to the House Committee for endorsement. As regards questions on the operational details concerning matters such as the handling of confidential materials, the Subcommittee noted that the Secretariat would conduct an internal briefing to members on 4 December 2008.

89. Mr KAM Nai-wai said that in the past two days, there were media reports that the minibond buyback programme would likely be postponed or even abandoned. In view of the wide public concern on the matter, he urged the Chairman of the Subcommittee to advance the next meeting of the Subcommittee scheduled for 9 December 2008 to the earliest possible day. He considered it essential for the Subcommittee to invite the Administration and the financial institutions to brief members on the matter. Noting that the

Action

next meeting of the Subcommittee would be a closed meeting, he further expressed the view that the meetings of the Subcommittee should be held in the open as far as practicable.

90. The Chairman said that the issues raised by Mr KAM were operational matters to be decided by the Subcommittee. She trusted the Subcommittee Chairman would deal with them.

91. Members endorsed the practice and procedure proposed to be adopted by the Subcommittee as set out in the Annex to the paper.

92. The Chairman reminded Members that the Secretariat would conduct an internal briefing on 4 December 2008 on the practice and procedure for conducting inquiries pursuant to the exercise of the summoning powers under section 9(1) of Cap. 382.

X. Any other business

LegCo Building Open Day

93. The Chairman said that a table on the arrangements for Members participating in the LegCo Building Open Day to be held on 29 November 2008 was tabled at the meeting. She requested Members to verify the accuracy of the information contained therein. She further said that the table showing Members' roster would be posted outside the LegCo Building during the Open Day for the reference of the public. She appealed to Members to participate in the Open Day and to contact the Chief Public Information Officer.

94. There being no other business, the meeting ended at 4:02 pm.