

立法會

Legislative Council

LC Paper No. CB(2) 1100/08-09

Ref : CB2/H/5/08

House Committee of the Legislative Council

Minutes of the 18th meeting held in the Legislative Council Chamber at 2:30 pm on Friday, 6 March 2009

Members present :

Hon Fred LI Wah-ming, JP (Deputy Chairman)

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 LEUNG Yiu-chung

Hon WONG Yung-kan, SBS, JP

Hon LAU Kong-wah, JP

Hon Emily LAU Wai-hing, JP

Hon Andrew CHENG Kar-foo

Hon Abraham SHEK Lai-him, 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 Alan LEONG Kah-kit, SC

Hon LEUNG Kwok-hung

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

Hon CHAN Hak-kan

Hon Paul CHAN Mo-po, MH, JP

Hon CHAN Kin-por, 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 Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Timothy TSO	Assistant Legal Adviser 2
Miss Kitty CHENG	Assistant Legal Adviser 5
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)8

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I. Confirmation of the minutes of the 17th meeting held on 27 February 2009
(*LC Paper No. CB(2) 1001/08-09*)

The minutes were confirmed.

II. Matters arising

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

Legislative Programme 2008-2009

2. The Deputy Chairman said that in respect of the eight Bills which had been taken out from the Legislative Programme for 2008-2009, CS had indicated that the Administration was prepared to explain to the relevant Panels the reasons for not introducing them in the current session.

3. Ms Audrey EU said that while the Bureaux concerned should explain to individual Panels the reasons for taking out the relevant Bills from the Legislative Programme, it was important for the Administration to give an overall picture on the reasons for not introducing the eight Bills in the current session. In her view, providing explanations to individual Panels was inadequate as the picture would be fragmented. She recalled that when the Chairman recently raised with CS the concern expressed by Mr Ronny TONG about the late introduction of bills on the Legislative Programme into the Council, CS had indicated then that he had urged the policy bureaux to introduce the bills into the Council as early as possible. However, Members were informed shortly thereafter of the taking out of the eight Bills from the

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Legislative Programme. She added that it was about time for CS to attend a special House Committee meeting. She suggested inviting CS to a special House Committee meeting as soon as practicable for him to give an overall picture on the reasons for deferring the introduction of the eight Bills into the Council.

4. In response to Ms Audrey EU's enquiry, the Deputy Chairman said that CS last attended a special House Committee meeting on 12 December 2008.

5. Mr Ronny TONG expressed concern about the small number of bills introduced into the Council so far. He opined that with only a few months remaining before the summer recess, the late introduction of bills on the updated Legislative Programme would not make it possible for Members to complete their scrutiny within the current session. He strongly requested the Deputy Chairman to convey his concern to the Administration.

6. Ms Audrey EU cited the proposed resolution concerning the Product Eco-responsibility (Plastic Shopping Bags) Regulation as an example to illustrate the unreasonably tight timetable for scrutiny made available to the Legislative Council (LegCo). She elaborated that the Administration had originally given notice to move the proposed resolution at the Council meeting on 4 February 2009 with a view to implementing the proposed measures under the Regulation in July 2009. The positive vetting procedure had been adopted for the making of the Regulation at the request of the Bills Committee formed to study the primary legislation as the Bills Committee was concerned about the little time for scrutiny should the negative vetting procedure be adopted. However, as the Administration needed three months to prepare for the implementation of the proposed measures, the Subcommittee formed to study the proposed resolution would have to complete its scrutiny in mid March 2009 in order to tie in with the Administration's timetable. It turned out that the scrutiny period was even less than the 49 days available under the negative vetting procedure. Owing to the tight timetable, the Subcommittee had to hold a total of five meetings in March 2009. Ms EU considered it necessary for Members' concern about the difficulties created in completing the scrutiny of the Regulation to be conveyed to CS, and for the Administration to explain this clearly to the public.

7. Mr LEE Wing-tat agreed with Ms Audrey EU and Mr Ronny TONG that CS should attend a special House Committee meeting to explain the matter as soon as practicable. He pointed out that the deferral by the Government of the introduction of the eight Bills as well as such important issues as public broadcasting policy, competition policy and public consultation on constitutional reform had left it with very little work.

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8. Mr LEUNG Kwok-hung said that the Administration was "childish" ("幼稚"), "popularity-seeking" ("嘩眾取寵") and "bored" ("無聊"). This was because the Administration was ignorant that its work had to be monitored by LegCo; it had tried to please Members by undertaking to introduce the bills on the Legislative Programme as soon as possible but could not honour its undertaking; and it was left with very little work to do. He criticized the Administration for emphasizing the importance of maintaining the dignity of LegCo on the one hand but affronting the dignity of LegCo on the other as it had not done its work, thus rendering LegCo unable to fulfil its monitoring role. He considered the deferral of the introduction of the eight Bills unacceptable, and suggested referring the matter to the Committee on Rules of Procedure (CRoP). He appealed to Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) to support his suggestion.

9. Mr Albert CHAN said that Members belonging to the League of Social Democrats (LSD) considered it necessary to condemn the Administration for failing to honour its undertaking to introduce the Bills on the Legislative Programme and for ignoring the needs and rights of the public. He stressed that law-making was an important and serious matter. In his view, many ordinances were anachronistic and should be amended. Some legislative amendments had been discussed for years and any delay in introducing legislative amendments would deprive the public of their rights. Given the seriousness of the matter, he proposed to move a motion to condemn the Administration for deferring the introduction of the Bills. He added that Members who did not support the condemnation of the Administration were condoning the Administration's bullying behaviour and should not serve as the representatives of the Hong Kong people.

10. The Deputy Chairman said that any proposed motion should be presented to the House Committee in written form.

11. Dr Margaret NG did not agree with CS's suggestion of the Bureaux concerned explaining to individual Panels the deferral of the introduction of the Bills. She pointed out that while there were specific reasons for the deferral of the introduction of each Bill, the deferred introduction of as many as eight Bills at the same time was a different matter. She considered it necessary for CS to provide the House Committee with an overall picture on the reasons for not introducing the eight Bills in the current session.

12. The Deputy Chairman invited Members' views on the suggestion of requesting CS to attend a special House Committee meeting to give an overall picture on the reasons for not introducing the eight Bills in the current session.

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13. Ms Audrey EU said that she did not object to individual Panels discussing the deferred introduction of the Bills which fell within their policy areas. She stressed that requesting CS to explain the matter to the House Committee and requiring the Bureaux concerned to explain to the relevant Panels were not mutually exclusive.

14. Ms Emily LAU shared the view that the Administration should explain to the House Committee and individual Panels concerned the reasons for not introducing the Bills in the current session. She requested the Deputy Chairman to convey to CS her view that the Bureau Secretaries concerned should take the initiative to explain to the relevant Panels and not at the request of the Panels. She added that the onus should rest with the Administration.

15. The Deputy Chairman said that he would convey Ms Emily LAU's view to CS at their meeting the following Monday.

16. Members agreed to request CS to attend a special House Committee meeting to give an overall picture on the reasons for not introducing the eight Bills in the current session.

17. The Deputy Chairman said that Mr Albert CHAN, Mr LEUNG Kwok-hung and Mr WONG Yuk-man proposed jointly to move the following motion –

"本會強烈譴責政府違反承諾，拖延法例草擬，剝削市民基本權利。"

(Translation)

"That this Committee strongly condemns the Government for breaching its pledge by delaying the drafting of the legislation and depriving the public of their basic rights."

18. Mr LAU Kong-wah agreed that it was necessary to invite CS to attend a special House Committee meeting to explain the reasons for the deferral of the introduction of the Bills. However, he did not consider it appropriate to condemn the Administration at the present stage before CS had explained the matter to the House Committee. He said that Members belonging to DAB did not support the proposed motion.

19. Mr LEUNG Kwok-hung said that Members belonging to LSD had been condemned in no time by DAB for their behaviour at the Council meeting on 25 February 2009. DAB had even suggested the formulation of a mechanism to expel them from LegCo. However, Members belonging to

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LSD had never been given any opportunity to explain themselves. He criticized Members belonging to DAB for adopting a double standard to please the Administration. He added that this also showed popularity-seeking on the part of DAB.

20. Mr Albert CHAN said that he had been a LegCo Member since 1991. A comparison of the number of legislative proposals, including both primary and subsidiary legislation, which had been introduced into LegCo and the number of committees formed to scrutinize the proposals over the past years would show that the current session was unprecedented in terms of the least number of bills introduced into the Council. He reiterated that in deferring the introduction of the Bills, the Administration was ignoring the needs of the society and the public. It was also using its authority to suffocate the development of the society and the exercise of the public's rights. He considered this a form of violence deserving condemnation. In his view, Members who did not support the proposed motion should be condemned as well for condoning the oppressive behaviour of the Administration.

21. The Deputy Chairman invited Members to note the advice of the Legal Adviser (LA) that the House Committee should make reference to the procedure for dealing with proposed motions at a Panel meeting as stipulated in the House Rules (HR). Under the relevant provision in HR, a motion would be proceeded with if agreed by a majority of the members voting. The Deputy Chairman said that Members should first decide whether the proposed motion should be proceeded with.

22. Mr LAU Kong-wah referred to the past occasions where motions proposed by Members were placed formally on the agenda for the House Committee meetings. He said that with prior notification of the moving of the proposed motions, Members could consider beforehand how to vote on the motions. He sought clarification on whether the procedure referred to by LA applied to a motion which was moved without notice.

23. At the invitation of the Deputy Chairman, Secretary General said that by reference to HR which applied to Panels, a motion might be proposed if it was directly related to an agenda item of the meeting. Motions with prior notice could be placed formally on the agenda for the meeting. As for motions which were moved without notice, the Chairman should decide pursuant to HR 22(p) whether a motion was directly related to the agenda item. If the motion was ruled directly related to the agenda item, the motion would be proceeded with if agreed by a majority of the members voting. The Chairman would then invite members' views on the motion before putting it to vote.

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24. Mr James TO said that the Members proposing the motion might consider improving the text for logical presentation. He suggested replacing the phrase "delaying the drafting of the legislation and depriving the public of their basic rights" with "delaying the introduction of the Bills which were closely related to people's livelihood". He pointed out that one of the important roles of LegCo was to monitor Government policies, some of which might be implemented through legislation. He stressed the importance for LegCo and the Administration to co-operate smoothly in their work. In his view, the Legislative Programme provided by the Administration at the beginning of a session should be regarded as a tacit understanding between the Administration and LegCo on the legislative work for the session, and LegCo would plan its work having regard to the Programme. For instance, Members would take into consideration the number of bills on the Programme in deciding the number of subcommittees on policy issues to be formed. Should a large number of bills be expected to be introduced in the session, Members might put on hold the formation of certain such subcommittees to ensure that they would have the capacity to scrutinize the bills after their introduction into the Council. He considered that the Administration should be condemned if sudden changes were made to the Programme without reasonable explanations as this would disrupt the work of LegCo.

25. Dr PAN Pey-chyou agreed with the view that deferral of the introduction of the Bills was a matter for concern and it was appropriate and necessary for CS to attend a special House Committee meeting to explain the matter. He considered it neither justified nor reasonable to condemn the Administration at the present stage before CS had the opportunity to explain the matter to the House Committee. Such doing would be tantamount to making a judgement before trial. He also considered it inappropriate to decide on such an important motion when some Members were not able to attend the House Committee meeting.

26. Mr LAU Kong-wah said that as the proposed motion was related to the introduction of bills which was the subject under discussion, he considered it in order to proceed to deal with the motion.

27. Mr LEUNG Kwok-hung stressed that the Administration had repeatedly ignored Members' request for the early introduction of the Bills on the Legislative Programme. This had affected seriously not only the making of laws but also the planning of LegCo's work. The Administration should therefore be condemned. He considered it necessary to use the word "condemn" instead of "regret" in the motion as the latter word was too neutral. He opined that condemnation of the Administration should not be regarded as exceptional given that it was accountable to LegCo. It would be appropriate for LegCo to condemn the Administration for unsatisfactory work. Should

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the proposed motion be carried, CS could then explain to Members at the special House Committee meeting the difficulties encountered in introducing the Bills and the remedial actions to be taken. He added that Members who had not attended the House Committee meeting should be responsible for their own action.

28. Ms Emily LAU considered it in order to proceed with the motion. She suggested suspending the meeting for say, two minutes, to allow Members belonging to different political parties and groups to discuss among themselves before the motion was put to vote.

29. Mr Abraham SHEK expressed support for Ms Emily LAU's suggestion.

30. The Deputy Chairman suggested suspending the meeting at that juncture for about five minutes. Members agreed.

(The meeting was suspended at 2:56 pm and resumed at 3:02 pm.)

31. The Deputy Chairman informed members that Mr Albert CHAN had amended the wording of the motion as follows -

"本會強烈譴責政府違反承諾，拖延法例草擬，剝削市民基本權利
提交條例草案。"

(Translation)

"That this Committee strongly condemns the Government for breaching its pledge by delaying the ~~drafting of the legislation and depriving the public of their basic rights~~ **introduction of the Bills.**"

32. The Deputy Chairman put to vote the question on whether to proceed with the proposed motion as amended by Mr Albert CHAN. The result was: 20 Members voted for and two Members voted against it, and 12 Members abstained. The Deputy Chairman declared that the proposed motion should be proceeded with.

33. The Deputy Chairman then put to vote the motion as amended by Mr Albert CHAN. The result was: 17 Members voted for and 17 Members voted against the motion, and one Member abstained. The Deputy Chairman said that since it was a tie vote, he, as the presiding Member, should not exercise the vote in such a way as to produce a majority vote in favour of the question put, in accordance with Rule 79A(1) of the Rules of Procedure. As such, he would exercise his casting vote to negative the motion. The Deputy Chairman declared that the motion was voted down.

Incident relating to the suspension of the Council meeting on 25 February 2009

34. The Deputy Chairman said that CS had indicated that he had written to the President on the behaviour of a few Members at the Council meeting on 25 February 2009. CS hoped that the President and the Chairman of the House Committee would follow up the matter. The Deputy Chairman further said that in view of the fact that CRoP had scheduled a special meeting in April 2009 to discuss the matter, it was not necessary to deal with the subject at this meeting.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on subsidiary legislation gazetted on 25 February 2009 and tabled in Council on 4 March 2009**

(LC Paper No. LS 44/08-09)

35. The Deputy Chairman said that two items of subsidiary legislation were gazetted on 25 February 2009 and tabled in the Council on 4 March 2009.

36. At the invitation of the Deputy Chairman, LA briefed Members on these two items of subsidiary legislation.

37. Members did not raise any queries on these two items of subsidiary legislation.

(b) **Legal Service Division report on subsidiary legislation gazetted on 27 February 2009 and tabled in Council on 4 March 2009**

(LC Paper No. LS 46/08-09)

38. The Deputy Chairman said that four items of subsidiary legislation, including two Commencement Notices, were gazetted on 27 February 2009 and tabled in the Council on 4 March 2009.

39. At the invitation of the Deputy Chairman, LA briefed Members on these four items of subsidiary legislation.

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

IV. Further business for the Council meeting on 11 March 2009

(a) Government motions

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

- (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 resolution issued vide LC Paper No. CB(3) 392/08-09 dated 26 February 2009.)

41. The Deputy Chairman said that the relevant Subcommittee had presented its report at the House Committee meeting on 6 February 2009, and Members had not raised objection to the Administration giving fresh notice to move the motions on the three Orders at the Council meeting.

(b) Members' motions

Proposed resolution to be moved by Dr Hon Samson TAM Wai-ho under section 34(4) of the Interpretation and General Clauses Ordinance relating to the:

- (i) Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2009;**
- (ii) Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2009; and**
- (iii) Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2009**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 412/08-09 dated 3 March 2009.)

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42. The Deputy Chairman said that Dr Samson TAM, Chairman of the relevant Subcommittee, would move a motion at the Council meeting to extend the scrutiny period of the three items of subsidiary legislation to 1 April 2009.

V. Business for the Council meeting on 18 March 2009

(a) Questions

(LC Paper No. CB(3) 413/08-09)

43. The Deputy 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

44. The Deputy Chairman said that no notice had been received yet.

(c) Government motions

(i) Proposed resolution to be moved by the Chief Secretary for Administration under the Matrimonial Causes Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 403/08-09 dated 27 February 2009.)

(LC Paper No. LS 47/08-09)

45. At the invitation of the Deputy Chairman, LA said that the proposed resolution was for seeking LegCo's approval of the Matrimonial Causes (Fees) (Amendment) Rules 2009 which were related to the Civil Justice Reform (CJR). The Amendment Rules sought to amend the Matrimonial Causes Rules as a consequence of the reforms in taxation in the Rules of the High Court and Rules of the District Court, which had been examined by a Subcommittee formed under the House Committee. Subject to the approval by resolution of LegCo, the Amendment Rules would come into operation on the day appointed for the commencement of the Civil Justice (Miscellaneous) (Amendments) Ordinance 2008 and the other CJR-related subsidiary legislation, i.e. 2 April 2009.

46. Members did not raise objection to the Administration moving the proposed resolution.

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(ii) Proposed resolution to be moved by the Secretary for Financial Services and the Treasury under the Motor Vehicles (First Registration Tax) Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 402/08-09 dated 26 February 2009.)

(LC Paper No. LS 45/08-09)

47. At the invitation of the Deputy Chairman, LA said that the resolution was for seeking the approval of LegCo to implement the proposal in the 2009-2010 Budget to extend the exemption for electric vehicles (i.e. motor vehicles which were propelled solely by electric power and did not emit any exhaust gas) from first registration tax for a further five years to midnight on 31 March 2014.

48. Members did not raise objection to the Administration moving the proposed resolution.

(iii) Proposed resolution to be moved by the Secretary for Financial Services and the Treasury under the Public Finance Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 415/08-09 dated 4 March 2009.)

49. The Deputy Chairman said that the Secretary for Financial Services and the Treasury had given fresh notice to move the proposed resolution at the Council meeting. The relevant Subcommittee would make a verbal report under agenda item VI below.

(d) Members' motions

(i) Motion on "Comprehensively reviewing the role and functions of the University Grants Committee"

(Wording of the motion issued vide LC Paper No. CB(3) 418/08-09 dated 5 March 2009.)

(ii) Motion on "Promoting the development of leisure agriculture and fishery trade"

(Wording of the motion issued vide LC Paper No. CB(3) 419/08-09 dated 5 March 2009.)

50. The Deputy Chairman said that the above motions would be moved by Prof Patrick LAU and Mr WONG Yung-kan respectively, and the wordings of the motion had been issued to Members.

51. The Deputy Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 11 March 2009.

VI. Report of Bills Committees and subcommittees

Report of the Subcommittee on Proposed Resolution under Section 7(1) of the Public Finance Ordinance (Cap.2)

52. Ms Emily LAU, Chairman of the Subcommittee, reported that the purpose of the proposed resolution was to seek funds on account to enable the Government to carry on its services between the start of the financial year on 1 April 2009 and the enactment of the Appropriation Ordinance 2009.

53. Ms LAU elaborated that the Subcommittee held a meeting on the day before the House Committee meeting. With particular reference to the suggestions made by the Subcommittee formed to study the Vote on Account (VOA) resolution last year, the Subcommittee discussed with the Administration the arrangements and funding sought for this year's VOA resolution, including the timetable for moving the proposed resolution, the method for calculating the amount of funds on account sought and the usage of the funds. She further reported that the Subcommittee had completed its scrutiny work and would submit a written report as soon as possible. She added that the Subcommittee supported the Administration's giving fresh notice to move the proposed resolution at the Council meeting on 18 March 2009.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1002/08-09)

54. The Deputy Chairman said that there were four Bills Committees, six subcommittees under the House Committee (i.e. three subcommittees on subsidiary legislation and three subcommittees on policy issues) and seven subcommittees under Panels in action.

VIII. Any other business

55. There being no other business, the meeting ended at 3:18 pm.