

立法會
Legislative Council

LC Paper No. CB(2) 363/09-10

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 5th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 20 November 2009**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
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 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 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 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, SBS, 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

| | |
|-------------------|--|
| Ms Connie FUNG | 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 |
| Mr Bonny LO | Assistant Legal Adviser 3 |
| Mr YICK Wing-kin | Assistant Legal Adviser 8 |
| Ms Amy YU | Senior Council Secretary (2)3 |
| Ms Anna CHEUNG | Senior Legislative Assistant (2)3 |
| Mr Arthur KAN | Legislative Assistant (2)8 |

Action

I. Confirmation of the minutes of the 4th meeting held on 13 November 2009
(LC Paper No. CB(2) 299/09-10)

The minutes were confirmed.

II. Matters arising

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

Special House Committee meeting

2. The Chairman said that she had followed up with CS again on the date of the special House Committee meeting. CS indicated that he had noted Members' request.

(b) Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2009

(Paragraphs 5 to 9 of the minutes of the 4th meeting held on 13 November 2009)

(Letter dated 18 November 2009 from the Employees Retraining Board (LC Paper No. CB(2) 326/09-10(01))

3. The Chairman said that at the last House Committee meeting, Mr James TO had asked for information on the background of one of the four organizations (i.e. Monita Hair & Beauty Academy) to be added to Schedule 2 to the Employees Retraining Ordinance so that they might provide or conduct retraining courses. The requisite information provided by the Employees Retraining Board had been circulated to Members.

4. Members did not raise any further query on the Notice.

Action

5. The Chairman reminded Members that the deadline for amending the Notice was 9 December 2009.

III. Business arising from previous Council meetings

(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

Import and Export (Amendment) Bill 2009

(LC Paper No. LS 14/09-10)

6. The Chairman said that the Bill sought to amend the description of persons who might become authorized officers under the Import and Export Ordinance and the description of vessels in the Ordinance to which the rebuttable presumption as to smuggling purpose applied.

7. The Chairman further said that the Panel on Security had discussed the legislative proposals at its meeting held on 29 June 2009, and various concerns had been raised. The Legal Service Division had written to the Administration concerning the drafting and consultation issues in respect of the Bill.

8. At the invitation of the Chairman, Legal Adviser said that the Administration's reply had just been received, and a further report would be made by the Division, if necessary.

9. Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(Post-meeting note : A further report from the Legal Service Division was circulated to Members vide LC Paper No. CB(2) 376/09-10 on 25 November 2009.)

(b) Legal Service Division report on subsidiary legislation gazetted on 13 and 14 November 2009 and tabled in Council on 18 November 2009

(LC Paper No. LS 13/09-10)

10. The Chairman said that two items of subsidiary legislation, including one Commencement Notice, were gazetted on 13 and 14 November 2009 respectively and tabled in the Council on 18 November 2009.

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

12. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 16 December 2009.

Action

IV. Business for the Council meeting on 2 December 2009

(a) Questions

(LC Paper No. CB(3) 164/09-10)

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

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

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

(c) Government motion

Proposed resolution to be moved by the Secretary for the Environment under the Ozone Layer Protection Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 167/09-10 dated 18 November 2009.)

15. The Chairman said that the Secretary for the Environment had given fresh notice to move the proposed resolution at the Council meeting. The relevant Subcommittee had reported at the last House Committee meeting.

(d) Members' motions

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

16. The Chairman said that the subject of the motion to be moved by Ms Audrey EU was "Actively responding to the United Nations Climate Change Conference 2009".

(ii) Motion to be moved by Hon Alan LEONG Kah-kit

17. The Chairman said that the subject of the motion to be moved by Mr Alan LEONG was "Roadmap for universal suffrage".

18. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 25 November 2009.

V. Report of Bills Committees and subcommittees

(a) Report of the Subcommittee on Building (Minor Works) (Fees) Regulation

(LC Paper No. CB(1) 407/09-10)

19. Mr CHAN Kin-por, Chairman of the Subcommittee, reported that the Regulation set out the level of fees for various applications for registration as

Action

registered minor works contractors. The Subcommittee had held three meetings, and had received views from eight organizations.

20. Mr CHAN elaborated that the Subcommittee expressed concern about the basis for setting and revising the various fees. The Administration had explained that the fees were set according to the full cost recovery principle. Most of the fees were calculated at the 2007-2008 price level, without taking into account the some 10% inflation factor. The fees would be reviewed regularly and revised where necessary. Any revision of fees would be done by way of amendments to subsidiary legislation, which would be subject to negative vetting by the Legislative Council (LegCo).

21. Regarding the concern about the registration fees payable by non-natural person applicants (such as firms), Mr CHAN said that the Administration had explained that separating application and registration fees would reduce the costs to be borne by unsuccessful non-natural person applicants as these applicants would only have to pay the application fee. There was no such need for natural person applicants in view of the expected high success rate and the low fees involved. On the higher fee payable by natural person applicants seeking registration on the basis of experience, the Administration had explained that as more procedures and resources would be involved in vetting applications on the basis of experience, the fees would be correspondingly higher.

22. Mr CHAN further reported that to address the concern about the affordability of the registration fees for individual practitioners and to encourage early registration, the Administration had agreed to provide, during the first 12 months of the registration period, a subsidy of \$150 to each applicant whose first-time application of any class III minor works item relied solely on his/her experience, so that such an applicant would only need to pay \$155 (instead of \$305) for registration.

23. Mr CHAN further said that the Subcommittee also expressed concern about the proposed fees for review of decisions on registration of applications and urged the Administration to come up with improvement measures. In response to members' concern, the Administration would move amendments to add a new clause to sections 8, 17 and 21 of the Regulation to provide for the refund of the review fees by the Building Authority to successful review applicants. Mr CHAN added that the Subcommittee supported the proposed level of application fees and the amendments to be moved by the Administration.

24. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 2 December 2009, the deadline for giving notice of amendments, if any, was Wednesday, 25 November 2009.

**(b) Report of the Subcommittee on Rules of the High Court
(Amendment) Rules 2009**

25. Dr Margaret NG, Chairman of the Subcommittee, made an oral report on the deliberations of the Subcommittee. She explained that the United Nations (Anti-Terrorism Measures) Ordinance had conferred the Administration with extensive powers concerning the search, seizure and detention of terrorist property, including the Chief Executive's power to apply for an order to specify persons and property as terrorists, terrorist associates or terrorist property; the Secretary for Justice's power to apply for an order to forfeit terrorist property; the Secretary for Security's power to freeze property suspected to be terrorist property; and the law enforcement agencies' power to investigate, seize and detain property suspected to be terrorist property. The Ordinance also provided for various powers of investigation (such as making an application for an order to require particular person(s) to furnish information or for a warrant to enter and search premises) and for the seizure and detention of property suspected to be terrorist property. The procedures for application to the Court of First Instance for exercising these powers were set out in the Amendment Rules, and some of these applications were to be heard in camera. The relevant sections of the Ordinance conferring such powers to the Administration would take effect upon the commencement of the Amendment Rules. She stressed that the Amendment Rules had significant impact on the freedom and property right of persons.

26. Dr NG said that as the Amendment Rules were subject to the negative vetting procedure, the Subcommittee had to work under a tight timeframe. Although a series of meetings had been held within a short time span, certain provisions of the Amendment Rules had yet to be scrutinized by the Subcommittee. At the meeting held in the morning of the day of the House Committee meeting, the Subcommittee had agreed to hold a further meeting the following Monday to complete the scrutiny of the remaining provisions.

27. Dr NG further said that as more time was needed to scrutinize the Amendment Rules in detail, the Subcommittee agreed at its meeting on 16 November 2009 that members' view be sought by circulation of paper on a proposal for her, as the Subcommittee Chairman, to move a motion to repeal the Amendment Rules at the Council meeting on 2 December 2009, should the Administration refuse to move such a motion. The majority of the members had indicated support for the proposal. The Administration had appealed to members not to repeal the Amendment Rules in order that Hong Kong could fulfil its international obligations to combat terrorist activities as early as possible. Dr NG pointed out that the Rules of Procedure provided for the setting up of a subcommittee to consider draft subsidiary legislation. Had the Administration provided the Amendment Rules in draft form to LegCo, this would have allowed Members more time for scrutiny. Subject to members' views at the meeting to be held the following Monday, she would move a motion to repeal the Amendment Rules. The repeal of the Amendment Rules would provide the Administration with more time to improve their drafting and

Action

should not be taken as a disrespect for the work of the Rules Committee of the High Court. Dr NG added that some members did not agree to the proposal to repeal the Amendments Rules and supported the Amendment Rules albeit their not being well-drafted. The Subcommittee's written report would be provided to Members on 24 November 2009 before the deadline for giving notice of amendments on 25 November 2009.

28. Mr LAU Kong-wah said that when Subcommittee members were asked to indicate their views on the proposal to repeal the Amendment Rules, the Subcommittee had yet to discuss the Administration's responses on certain issues raised by members and to scrutinize certain provisions of the Amendment Rules. In response to members' request, the Subcommittee Chairman had subsequently arranged to hold two additional meetings. At the meeting held on the day of the House Committee meeting, the Subcommittee had considered the responses provided by the Administration. The Subcommittee would complete the scrutiny of the remaining provisions of the Amendment Rules at the meeting to be held the following Monday. Mr LAU pointed out that the making of the Amendment Rules were to complement the United Nations (Anti-Terrorism Measures) Ordinance which had been enacted. In his view, it would no longer be appropriate to repeal the Amendment Rules after the Subcommittee had the chance to consider the Administration's responses and complete the scrutiny of the remaining provisions.

29. The Chairman said that any Member might move a motion to amend any subsidiary legislation. Even if the Subcommittee did not support the moving of a motion by Dr Margaret NG on its behalf to repeal the Amendment Rules, she could still do so in her individual capacity.

30. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 2 December 2009, the deadline for giving notice of amendments, if any, was Wednesday, 25 November 2009.

(c) Report of the Subcommittee on Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009

31. The Chairman, in her capacity as Chairman of the Subcommittee, made an oral report on the deliberations of the Subcommittee. She reported that the Subcommittee had held three meetings and supported the Amendment Regulation which aimed to provide the legal framework for implementing the mutual recognition of qualification scheme (the Scheme) to be entered between the Estate Agents Authority (EAA) and the China Institute of Real Estate Appraisers and Agents (CIREA).

32. The Chairman elaborated that the Subcommittee had considered issues related to the operation of the Scheme, including the criteria adopted by EAA for selecting eligible estate agents for nomination to CIREA to receive training and be granted licences by CIREA to engage in estate agency work on the Mainland. The Subcommittee had also discussed the tailor-made training

Action

course to be organized by EAA for the CIREA nominees and the examination arrangements. Regarding eligibility requirements, members had requested EAA to seek clarification with CIREA on whether the requirement of "having no criminal conviction history" included minor convictions such as jay-walking.

33. The Chairman further reported that some members expressed concern about the jurisdiction and licensing considerations of EAA and CIREA. EAA considered that the jurisdiction of the respective regulatory regimes should accord with the place of the properties, i.e. EAA and CIREA would regulate the practice of their licensees in connection with Hong Kong properties and Mainland properties respectively, irrespective of whether the service was provided by a Hong Kong or Mainland estate agent, and whether the place of transaction took place in or outside Hong Kong. EAA would confirm with CIREA the understanding concerning the delineation of respective jurisdictions by the location of properties so as to ensure smooth operation.

34. The Chairman said that members noted that a notification mechanism would be established under the Scheme, under which EAA and CIREA would notify each other of the names of the Scheme licensees who had been disciplined by the other side. Upon receipt of such information, EAA would consider whether the licensee was still fit and proper to continue to hold a licence. EAA would discuss with CIREA the details of the notification mechanism in due course. The Chairman added that at the request of the Subcommittee, the Administration and EAA had undertaken to report to the Panel on Housing the details of the operation of the Scheme before issuing any licence under the Scheme and to provide the relevant agreement to the Panel.

35. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 2 December 2009, the deadline for giving notice of amendments, if any, was Wednesday, 25 November 2009.

(d) Continuation of work of subcommittees on policy issues
(*LC Paper No. CB(2) 301/09-10*)

36. The Chairman said that the paper invited Members to note the latest progress of work of five Subcommittees on policy issues appointed under the House Committee and Panels and to endorse their proposed continuation of work beyond 12 months since their commencement.

37. The Chairman pointed out that under Rule 26(c) of the House Rules, a subcommittee on policy issues should complete work within 12 months of its commencement and report to the House Committee or relevant Panel(s) as appropriate. Should such a subcommittee consider it necessary to work beyond 12 months, it should, after obtaining the endorsement of the relevant Panel(s), report to the House Committee and give justifications for an extension of the 12-month period. The Chairman then invited each of the Chairmen of the five Subcommittees to explain the need for the continuation of work of the Subcommittees.

Action

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

38. Dr Margaret NG, Chairman of the Subcommittee, reported that at the meeting of the House Committee on 7 November 2008, Members agreed that a dedicated subcommittee be formed to deal with regulations made under section 3 of the United Nations Sanctions Ordinance (UNSO) in accordance with the recommendation made by the former Subcommittee in the Third LegCo. Since its formation on 1 December 2008, the Subcommittee had held five meetings to examine eight Regulations made under UNSO and gazetted since October 2008.

39. Dr NG further said that in the light of the House Committee's decision in November 2008 and given that regulations made under UNSO would be submitted by the Government to LegCo from time to time, the Subcommittee would have to continue its work in the current session and the remaining sessions of the current term should the House Committee continue with its practice of referring these regulations to the Subcommittee. She appealed to Members to support the proposed continuation of work of the Subcommittee.

40. Members agreed to the continuation of work of the Subcommittee.

Subcommittee on Matters Relating to Railways under the Panel on Transport

41. The Chairman, in her capacity as the Chairman of the Subcommittee, reported that having regard to the wide range and complexity of issues relating to the planning and implementation of new railway projects, the Panel on Transport considered it necessary to set up a subcommittee to focus discussion on railways related issues and to provide a platform for stakeholders to express their views. The Subcommittee was set up in October 2008 to oversee matters relating to railways.

42. The Chairman further reported that in the 2008-2009 session, the Subcommittee had continued to follow up the planning, financing and implementation of new railway projects including the Kowloon Southern Link, West Island Line, Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL), South Island Line and Shatin to Central Link. The Subcommittee had also actively followed up with problems relating to the operation of railway systems. The Chairman highlighted that the Subcommittee had held a series of meetings in the past few weeks to discuss the project of the Hong Kong Section of XRL. Given that a number of new railway projects were under planning, the Subcommittee considered it necessary to continue its work in the 2009-2010 session. She appealed to Members to support the proposed continuation of work of the Subcommittee.

43. Members agreed to the continuation of work of the Subcommittee.

Action

Subcommittee on Improving Air Quality under the Panel on Environmental Affairs

44. Ms Audrey EU, Chairman of the Subcommittee, said that the ambient air pollution problem had all along been a public concern. To enable more focused discussion on Government's efforts in addressing air pollution, the Panel on Environmental Affairs set up a subcommittee in October 2008 to monitor and study policies as well as public concerns on improving air quality. In the 2008-2009 legislative session, the Subcommittee had studied a number of issues, including Government efforts in addressing climate change, progress of measures to achieve the emission reduction targets under the Pearl River Delta Regional Air Quality Management Plan beyond 2010, and progress of review of Hong Kong's Air Quality Objectives.

45. Ms EU further said that in view of the many measures and initiatives being contemplated by the Administration in improving air quality, the Panel considered that the Subcommittee would provide a platform for more focused discussion of these measures and initiatives. The Panel therefore decided that the Subcommittee should continue its work in the 2009-2010 session. She appealed to Members to support the proposed continuation of work of the Subcommittee.

46. Members agreed to the continuation of work of the Subcommittee.

Subcommittee on Harbourfront Planning under the Panel on Development

47. Prof Patrick LAU, Chairman of the Subcommittee, said that the Subcommittee planned to continue to study the following issues -

- (a) planning and implementation arrangements for the new Central harbourfront;
- (b) institutional arrangements for the planning, implementation and management of existing and new harbourfront areas; and
- (c) major strategies adopted by the Administration in implementing harbourfront enhancement initiatives, including strategies to enhance the connectivity and accessibility of harbourfront areas.

Prof LAU said that the study of the above issues was anticipated to take about six to nine months.

48. Prof LAU further said that at the meeting of the Panel on Development held on 15 October 2009, the Panel agreed that the Subcommittee should continue its work in the 2009-2010 session. He appealed to Members to support the proposed continuation of work of the Subcommittee.

49. Members agreed to the continuation of work of the Subcommittee.

Action

Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project under the Panel on Home Affairs and Panel on Development

50. Mr IP Kwok-him, Chairman of the Joint Subcommittee, highlighted the major issues studied by the Joint Subcommittee in the 2008-2009 session. These included the preparation of the Development Plan for the West Kowloon Cultural District (WKCD); planning of core arts and cultural facilities (including M+); WKCD's connectivity with adjoining districts and the community; appointment of members to the WKCD Authority (WKCDA) Board and six committees of WKCDA; recruitment of the Chief Executive Officer (CEO) and other senior executives of the WKCDA; public engagement for WKCD; the role of the Consultation Panel; accessibility of meeting papers of WKCDA to the public; use of the upfront endowment of \$21.6 billion to WKCDA; and measures to promote the development of cultural software to complement the WKCD project.

51. Mr IP said that most of the issues highlighted above were ongoing issues the development of which would have a significant bearing on the implementation of the WKCD project. In addition, the work of WKCDA had reached/would soon reach some important landmarks: WKCDA had commissioned three Conceptual Plan Consultants and the Project Consultant in July 2009 for the preparation of the three Conceptual Plan options and Development Plan for WKCD; WKCDA had embarked on the recruitment of the CEO and other senior executives in September 2009 and had also rolled out Stage One of its public engagement exercise in October 2009; and the first annual report of WKCDA had been tabled at LegCo in October 2009. The Joint Subcommittee would need to continue to monitor the development of these issues, which were within the purview of its terms of reference.

52. Mr IP added that having regard to the above considerations, the Panel on Home Affairs and Panel on Development agreed that the Joint Subcommittee should continue its work according to its existing terms of reference in the 2009-2010 session.

53. Members agreed to the continuation of work of the Subcommittee.

VI. Position on Bills Committees and subcommittees
(*LC Paper No. CB(2) 302/09-10*)

54. The Chairman said that there were 11 Bills Committees, seven subcommittees under the House Committee (i.e. four subcommittees on subsidiary legislation and three subcommittees on policy issues) and seven subcommittees under Panels in action.

Action

VII. Any other business

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

Council Business Division 2
Legislative Council Secretariat
26 November 2009