

立法會
Legislative Council

LC Paper No. CB(2) 876/09-10

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 13th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 29 January 2010**

Members present :

Hon Miriam LAU Kin-yee, 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
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
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 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, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP

Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members absent :

Hon LEE Cheuk-yan
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Ms Pauline NG	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General (Special Duty)
Mr Stephen LAM	Acting 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
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3

Action

I. Confirmation of verbatim transcript/minutes of meetings

(a) **Verbatim transcript of the special meeting held on 7 January 2010**
(LC Paper No. CB(2) 837/09-10)

(b) **Minutes of the 12th meeting held on 22 January 2010**
(LC Paper No. CB(2) 820/09-10)

The two sets of verbatim transcript/minutes were confirmed.

II. Matters arising

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

Concern about the Administration's handling of the motion on "Releasing LIU Xiaobo"

2. The Chairman said that she had relayed to CS the different views expressed by Members on the Administration's handling of the motion on "Releasing LIU Xiaobo". As Members belonging to the Democratic Party had indicated that they would write to him to express their views on the matter, the House Committee would take no further action.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 22 January 2010 and tabled in Council on 27 January 2010

(LC Paper No. LS 39/09-10)

3. The Chairman said that a total of four items of subsidiary legislation, including one Commencement Notice, were gazetted on 22 January 2010 and tabled in the Council on 27 January 2010.

4. Regarding the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice, the Chairman said that it sought to lower the application threshold on compulsory sale of land for redevelopment. The Panel on Development had been consulted on the legislative proposals at its meeting on 23 June 2009 and members had divergent views on the proposals.

5. Mr James TO considered it necessary to form a subcommittee to study the Notice.

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6. The Chairman proposed that a subcommittee be formed to study the Notice in detail. Members agreed. The following Members agreed to join: Mr Albert HO (as advised by Mr Fred LI), Mr James TO, Mr CHAN Kam-lam, Mr LAU Wong-fat, Ms Miriam LAU, Ms Audrey EU, Mr WONG Kwok-hing and Mr WONG Kwok-kin.

7. Regarding the Census and Statistics (Annual Earnings and Hours Survey) Order, the Chairman said that it sought to make the voluntary Annual Earnings and Hours Survey (AEHS) a mandatory survey for the purpose of implementing the Statutory Minimum Wage Scheme.

8. The Chairman further said that the Panel on Manpower had not been consulted on the Order. However, the Administration had briefed the Panel on AEHS at its meeting on 20 November 2008 under the subject of "Introduction of a new survey and enhancement of a current survey for the purpose of implementing a statutory minimum wage".

9. Ms LI Fung-ying considered it necessary to form a subcommittee to study the Order as the information collected in the survey was related to the implementation of a statutory minimum wage.

10. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Ms LI Fung-ying, Mr WONG Sing-chi (as advised by Mr Fred LI), Mr WONG Kwok-kin and Dr PAN Pey-chyou.

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

12. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 24 February 2010.

IV. Further business for the Council meeting on 3 February 2010

Business originally scheduled for the Council meeting on 27 January 2010

13. The Chairman said that the unfinished business on the Agenda of the Council meeting on 27 January 2010 would be dealt with at the Council meeting on 3 February 2010.

(a) Tabling of papers

Report No. 4/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

*(LC Paper No. CB(2) 819/09-10 issued vide LC Paper No. CB(3)
405/09-10 dated 27 January 2010)*

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14. The Chairman said that no Members had requested to speak on the subsidiary legislation covered in the report.

15. Members noted the report.

(b) **Questions**

(LC Paper No. CB(3) 400/09-10)

16. The Chairman said that Mr James TO and Mr KAM Nai-wai had replaced their oral questions.

(c) **Bills - resumption of debate on Second Reading, Committee Stage and Third Reading**

Occupational Deafness (Compensation) (Amendment) Bill 2009

17. The Chairman said that the relevant Bills Committee had reported to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) **Members' motions**

(Letter dated 28 January 2010 from Hon CHEUNG Kwok-che to the Chairman of the House Committee (LC Paper No. CB(2)851/09-10(01))

18. The Chairman said that Mr CHEUNG Kwok-che had written to the House Committee to seek its support to defer the debate on his motion on "Formulating a comprehensive youth policy" originally scheduled for the Council meeting on 3 February 2010 to 3 March 2010.

19. The Chairman explained the background to Mr CHEUNG Kwok-che's request. She said that as the unfinished business on the Agenda of the Council meeting on 27 January 2010 would be dealt with at the Council meeting on 3 February 2010, a total of four Members' motions would be held at the Council meeting on that date. They were the motion on appointment of a select committee to inquire into the interference with the professionalism of social workers on the part of the Secretary for Home Affairs and District Officer (Islands) to be moved by Mr CHEUNG Kwok-che; the motion on "Promoting the development of fishing activities" to be moved by Mr WONG Yung-kan; the motion on "Alleviating poverty and helping the disadvantaged with care and concern" to be moved by Mr TAM Yiu-chung; and the motion on "Formulating a comprehensive youth policy" to be moved by Mr CHEUNG Kwok-che.

20. Mr CHEUNG Kwok-che said that he would appreciate Members' views on his request.

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21. The Chairman invited Members' views on Mr CHEUNG's request.
22. Mr IP Kwok-him said that he noted the request of Mr CHEUNG Kwok-che to defer the debate on his motion to the Council meeting on 3 March 2010, in addition to two other debates on Members' motions without legislative effect to be held at that Council meeting. As such an arrangement would lengthen the Agenda of the Council meeting on 3 March 2010, he preferred adhering to the original arrangement of holding the debate on Mr CHEUNG's motion on 3 February 2010. He added that Members were prepared for the continuation of that Council meeting on 4 February 2010.
23. The Chairman drew to Members' attention that should Mr CHEUNG Kwok-che's motion be moved at the Council meeting on 3 February 2010 as originally scheduled, the business on the Agenda of that Council meeting would unlikely be finished on that date, and the Council meeting would have to resume the following day for continuation of the unfinished business. On the other hand, should the motion be deferred to 3 March 2010, the business on the Agenda of the Council meeting on 3 February 2010 could possibly be finished on that date.
24. Mr Andrew LEUNG said that as the meetings of the National Committee of the Chinese People's Political Consultative Conference and the National People's Congress would be held in early March 2010, some Members might not be able to attend the Council meeting on 3 March 2010.
25. The Chairman said that Mr CHEUNG Kwok-che might wish to take into consideration the need of some Members to be out of town on 3 March 2010 for attendance at the meetings mentioned by Mr LEUNG.
26. Ms Emily LAU was concerned whether a quorum would be present at the Council meeting on 3 March 2010 as some Members might be out of town. She sought clarification on the definition of the expression "all the members of Legislative Council (LegCo)" and the number of Members required to form a quorum of the Council following the resignation of five Members with effect from 29 January 2010.
27. At the invitation of the Chairman, Legal Adviser (LA) said that the Legal Service Division (LSD) had studied the matter arising from vacancies in the membership of LegCo following the resignation of five Members. He explained that Article 75(1) of the Basic Law (BL) and Rule 17(1) of the Rules of Procedure (RoP) were relevant to the issue of quorum. Rule 17(1) of RoP provided that the quorum of the Council should be not less than one half of all its Members, which was materially the same as BL 75(1). While the expression "all the members of LegCo" appeared in various provisions in BL, BL 75(1) was the only provision relating to the quorum for the meeting of LegCo. In LA's view, there could be two possible interpretations of the expression. It could mean all the seats of LegCo, or all the persons who were eligible to attend and vote at the Council meeting. He was inclined to adopt the latter interpretation. He elaborated that in the course of LSD's

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study, reference had been made to the available records on the drafting of BL. According to the records, the discussions had been focused on the question of whether the quorum for a meeting of LegCo should be one-third of all LegCo Members, or whether a higher ratio should be adopted. A higher ratio was preferred in the discussions but the records did not show whether the expression "all the members of LegCo" referred to all LegCo seats or all the persons who were eligible to attend and vote at a Council meeting. As the Executive had an interest in the question of whether a Council meeting was quorate in accordance with the law, the Secretary General had written to the Director of Administration to seek the view of the Administration for the reference of the President. The Director of Administration had yet to provide a reply.

28. Ms Emily LAU said that there was urgency in resolving the question of quorum for a Council meeting. She enquired when Members would be notified of the decision on the matter for discussion.

29. The Chairman agreed with the view that the matter should be resolved urgently. Members should know before the next Council meeting whether the quorum should be calculated on the basis of 55 or 60 Members. She requested LA to issue a paper to Members on the matter as soon as possible, after considering the views of the relevant parties.

30. Ms Cyd HO said that she learnt from news reports that LegCo had written to the Administration Wing on the definition of the expression "all the members of LegCo". She queried whether the Executive had the authority to interpret BL. In her view, LegCo should come to its own view on the matter. Where necessary, LegCo should seek clarification from the court instead of the Executive. She opined that other than the Executive, members of the community could question whether BL had been breached. She considered it inappropriate to seek the view of the Executive on the matter for the reference of the President.

31. Dr Margaret NG said that it was the normal practice for Members to seek the view of the Administration on matters relating to RoP, although the final decision rested with LegCo. She considered it both reasonable and necessary to seek the view of the Executive on the matter. Written advice from LA was also important. In her view, the President should explain his ruling on the matter openly at the following Council meeting in order for it to be recorded in the Official Record of the Proceedings of the Council.

32. Mr Albert HO considered it reasonable to seek the Administration's view on the provisions in RoP for which the Administration had a role, such as those relating to the passage of amendments to Government bills proposed by Members. However, he did not see any specific need to do so in respect of provisions relating to the internal matters of LegCo, such as the quorum for a Council meeting. He said that while reference could be made to the views of the Administration and other external parties such as academics, it was for the President to make a ruling on the matter based on the advice of LA.

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33. The Chairman sought confirmation on whether the Administration's view was sought for reference purpose only. LA replied in the affirmative.

34. Mr TAM Yiu-chung said that he was a member of the Drafting Committee for BL and had been involved in the drafting of BL. It was his clear understanding that the expression "all the members of LegCo" referred to all Members of and not all seats in LegCo. Had the expression been intended to refer to all the 60 LegCo seats, the relevant provisions in BL would have been drafted differently. He considered LA's view consistent with his understanding of the expression.

35. Mr James TO said that the Drafting Committee for BL had many members, and the view of one member could not be taken as the authority on the matter. It would be helpful if other members of the Drafting Committee could provide their views on the matter. He did not object to seeking the Administration's view, given that the quorum required for a Council meeting would have a bearing on the passage of bills or subsidiary legislation introduced by the Government. The Administration might wish to take a prudent approach and regard the quorum for a Council meeting as 30 Members in its planning of business for the consideration of the Council. He considered that LA should also look into the question of whether the President's ruling on the matter was binding on the President's deputy.

36. The Chairman reiterated that the matter should be resolved expeditiously.

37. Mr LAU Wong-fat said that according to his recollection, what Mr TAM Yiu-chung said was correct.

38. Mr IP Kwok-him shared the view that LA should provide as soon as possible the legal advice in writing as the discussion would be more effective after Members had considered the written advice. In his view, should there be any disputes on the quorum of the Council, the interpretation should rest with the Standing Committee of the National People's Congress and not the Hong Kong court.

39. Mr Paul TSE pointed out that Rule 17 of RoP provided for the quorum of the Council and of a committee of the whole Council. As he understood, Rule 17(4) referred to Members present at a division and not seats in the Council in calculating the quorum. For consistency, the interpretation of quorum of the Council in Rule 17 should be construed in the same manner. He therefore agreed to LA's view that the number of incumbent Members and not seats in the Council should be the basis for calculating the quorum. Mr TSE was concerned about the mechanism as to how Members would be informed of the legal advice and make a decision on the matter.

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40. The Chairman said that as LA would need to consider the matter comprehensively, it would not be appropriate for him to give piece-meal advice at the meeting. She requested LA to take note of the views expressed by Members and to provide his advice in writing to Members after consulting the relevant parties, if necessary.

41. Ms Emily LAU said that there should be a decision on the matter before the next Council meeting on 3 February 2010. She was of the view that Members should not only be informed of the legal advice but also provided with an opportunity to discuss the matter. She sought advice from the Chairman in this regard.

42. The Chairman said that if Members considered it necessary, a special House Committee could be convened to discuss the matter. Alternatively, Members might consider discussing the matter at the next House Committee meeting.

43. Mr James TO suggested that to take a prudent approach and for administrative arrangements, the quorum of the Council should be taken as 30 Members for the time being. He considered that this would avoid any unnecessary disputes.

44. Ms Emily LAU sought clarification on whether the quorum for the Council meeting on 3 February 2010 would be taken as 30 Members.

45. While appreciating Members' concern about the matter, LA said that the quorum of the Council was a legal issue and was not for LegCo to decide. Since BL provided that the President should preside over Council meetings, the President had to have a view on the meaning of "the quorum of the Council" in the performance of this function. Whether or not disputes on his ruling might arise in future was a separate issue. LA pointed out that in the study of the matter, he had made reference to the principles made by the Court of Final Appeal in the *NG Ka-ling v the Director of Immigration* case (1992) and the *CHONG Fung-yuen v the Director of Immigration* case (2001). LA further said that he had an obligation to provide timely advice for the consideration of the President who, he believed, would explain his ruling to Members. LA said that he would issue a paper to Members to explain the basis for the formulation of his advice on the matter.

46. The Chairman hoped that LA would issue the paper to Members as soon as possible.

47. Mr CHEUNG Kwok-che said that he was not aware of the annual meeting of the National People's Congress and the National Committee of the Chinese People's Political Consultative Conference in early March. In order that more Members could attend the debate on the motion, he withdrew his request for deferring the motion debate to the Council meeting on 3 March 2010.

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48. The Chairman said that as there would be many items of business at the Council meeting on 3 February 2010, the Council would likely have to resume the meeting the following day to deal with the unfinished business on the agenda.

V. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 821/09-10)

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

VI. Any other business

50. There being no other business, the meeting ended at 2:56 pm.

Council Business Division 2
Legislative Council Secretariat
3 February 2010