

立法會  
*Legislative Council*

LC Paper No. CB(2) 1938/09-10

Ref : CB2/H/5/09

**House Committee of the Legislative Council**

**Minutes of the 28th meeting  
held in the Legislative Council Chamber  
at 6:32 pm on Friday, 25 June 2010**

**Members present :**

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)  
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
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 WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, 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 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 CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon KAM Nai-wai, MH  
Hon Starry LEE Wai-king  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Hak-kan  
Hon Paul CHAN Mo-po, MH, JP  
Hon CHAN Kin-por, JP  
Dr Hon Priscilla LEUNG Mei-fun  
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  
Hon Alan LEONG Kah-kit, SC  
Hon Tanya CHAN

**Members absent :**

Hon Albert HO Chun-yan  
Dr Hon David LI Kwok-po, GBM, GBS, JP  
Hon LEUNG Yiu-chung  
Dr Hon Philip WONG Yu-hong, GBS  
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 Frederick FUNG Kin-kee, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon LEUNG Kwok-hung  
Hon Albert CHAN Wai-yip  
Hon WONG Yuk-man

**Clerk in attendance :**

Mrs Vivian KAM Clerk to the House Committee

**Staff in attendance :**

Ms Pauline NG	Secretary General
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General (Special Duties)
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Kelvin LI	Acting 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 KAU Kin-wah	Assistant Legal Adviser 6
Ms Clara TAM	Assistant Legal Adviser 9
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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**I. Confirmation of the minutes of the 27th meeting held on 18 June 2010**  
(*LC Paper No. CB(2) 1891/09-10*)

The minutes were confirmed.

**II. Matters arising**

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

Introduction of bills

2. The Chairman said that she had conveyed to CS that of the 21 Bills included in the Administration's Legislative Programme for the current session, 15 Bills had already been introduced or scheduled for introduction into the Council. She had enquired with CS whether the remaining six Bills would be introduced within the current session. CS had indicated that the Administration would strive to complete the drafting of the remaining six Bills as soon as practicable for their introduction into the Council. Should any of these Bills not be introduced as scheduled, the bureau concerned would report to the relevant Panel.

**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)**

**Supplementary Appropriation (2009-2010) Bill**  
(*LC Paper No. LS 78/09-10*)

3. The Chairman said that the Bill sought to provide for the appropriation of \$6,056,612,647.25 for the services of the Government in the financial year that ended on 31 March 2010 in addition to the sum appropriated by the Appropriation Ordinance 2009.

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

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(b) **Legal Service Division report on subsidiary legislation gazetted on 18 June 2010 and tabled in Council on 23 June 2010**

*(LC Paper No. LS 77/09-10)*

5. The Chairman said that five items of subsidiary legislation, including one Commencement Notice, were gazetted on 18 June 2010 and tabled in the Council on 23 June 2010.

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

7. The Chairman reminded Members that the deadline for amending the subsidiary legislation was the second meeting of the Legislative Council ("LegCo") in the next session (i.e. 20 October 2010).

**IV. Further business for the Council meeting on 30 June 2010**

(a) **Tabling of papers**

*(LC Paper No. CB(2) 1893/09-10 issued vide LC Paper No. CB(3) 836/09-10 dated 23 June 2010)*

8. The Chairman said that the report covered two items of subsidiary legislation the period for amendment of which would expire on 30 June 2010. No Members had requested to speak on the subsidiary legislation.

9. Members noted the report.

(b) **Questions**

*(LC Paper No. CB(3) 825/09-10)*

10. The Chairman informed Members that Mr TAM Yiu-chung, Mr CHAN Kam-lam and Mr WONG Kwok-kin had replaced their oral questions.

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

**Deposit Protection Scheme (Amendment) Bill 2010**

11. The Chairman said that the relevant Bills Committee on the above Bill 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**

**Proposed resolution to be moved by Hon Tanya CHAN under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Country Parks (Designation) (Consolidation) (Amendment) Order 2010**

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*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 834/09-10 dated 24 June 2010.)*

12. The Chairman said that Miss Tanya CHAN, Chairman of the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010, would move a motion at the Council meeting to extend the scrutiny period of the Order to the first LegCo meeting in the next session (i.e. 13 October 2010).

**V. Business for the Council meeting on 7 July 2010**

**(a) Questions**

*(LC Paper No. CB(3) 824/09-10)*

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) Bills – resumption of debate on Second Reading, Committee Stage and Third Reading**

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**(i) Companies (Amendment) Bill 2010**

**(ii) Business Registration (Amendment) Bill 2010**

15. The Chairman said that the relevant Bills Committee on the above two Bills had made a verbal report at the last House Committee meeting, and Members did not raise objection to the resumption of the Second Reading debates on the Bills. The written report was provided under agenda item VII(a) below.

**(d) Government motions**

**(i) Proposed resolution to be moved by Secretary for Security under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (South Africa) Order**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 827/09-10 dated 22 June 2010.)*

**(ii) Proposed resolution to be moved by the Secretary for Security under the United Nations (Anti-Terrorism Measures) Ordinance on the code of practice prepared under the Ordinance**

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*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 806/09-10 dated 18 June 2010.)*

16. The Chairman said that the Secretary for Security had given fresh notices to move the above two proposed resolutions at the Council meeting. The relevant Subcommittees had reported at the House Committee meeting on 11 June 2010.

(e) **Members' motions**

(i) **Motion on “Report of the Subcommittee on Poverty Alleviation”**

*(Wording of the motion issued vide LC Paper No. CB(3) 830/09-10 dated 22 June 2010.)*

(ii) **Motion on “Enhancing the administration of tax policy in Hong Kong”**

*(Wording of the motion issued vide LC Paper No. CB(3) 839/09-10 dated 24 June 2010.)*

(iii) **Motion on “Utilizing young people’s power of civic participation”**

*(Wording of the motion issued vide LC Paper No. CB(3) 840/09-10 dated 24 June 2010.)*

17. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 29 June 2010.

Report on the study of subsidiary legislation

18. The Chairman said that the list of subsidiary legislation the period for amendment of which would expire on 7 July 2010 had been tabled at the meeting. Members who wished to speak on the subsidiary legislation should notify the Clerk by 5:00 pm on Tuesday, 29 June 2010.

**VI. The Chief Executive's Question and Answer Session on 13 July 2010**

19. The Chairman said that the Chief Executive ("CE")’s Question and Answer Session would be held from 3:00 pm to 4:30 pm, and invited Members' views on issues which they would like CE to cover at the Question and Answer Session. Members did not raise any particular issues.

**VII. Report of Bills Committees and subcommittees**

- (a) **Report of the Bills Committee on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010**  
*(LC Paper No. CB(1) 2329/09-10)*

20. The Chairman said that Mr Paul CHAN, Chairman of the Bills Committee, had made a verbal report at the last House Committee meeting. A written report was provided for the House Committee meeting.

**(b) Report of the Bills Committee on Stamp Duty (Amendment) Bill 2010**

*(LC Paper No. CB(1) 2326/09-10)*

21. Mr CHAN Kam-lam, Chairman of the Bills Committee, reported on the deliberations of the Bills Committee as detailed in its report. He elaborated that the Bill sought to increase the rate of stamp duty payable in relation to transactions of immovable property valued at more than \$20 million from 3.75% to 4.25%, and disallow deferment of payment of stamp duty chargeable on an agreement for sale made in respect of a residential property valued at more than \$20 million.

22. Mr CHAN Kam-lam further reported that as the number of property transactions valued at more than \$20 million only comprised 1.9% of the total number of property transactions, and over 90% of those transactions did not involve resale within two years of purchase, some members had questioned the efficacy of increasing the stamp duty of those transactions in curbing property speculation. They were of the view that target specific measures, such as introducing profits tax and capital gains tax for property transactions, prohibiting sub-sales through confirmors and imposing an additional stamp duty on a sub-sale through a confirmor, would be more effective than increasing stamp duty in curbing property speculation.

23. Mr CHAN Kam-lam further said that according to the Administration, the Inland Revenue Department had in place clear procedures for identifying and processing suspected property speculation cases. Property speculators were generally regarded as carrying on a business and all profits obtained by a person carrying on a business in Hong Kong would be subject to profits tax. The Administration was of the view that introducing capital gains tax for curbing property speculation would be a fundamental change to Hong Kong's prevailing simple tax regime with low tax rates, and this required very careful consideration. The proposal of introducing an additional stamp duty on a confirmor or a vendor selling a property might not be fair to those persons who had a genuine need to sell their properties before completion of assignment.

24. Mr CHAN Kam-lam added that both the Administration and the Bills Committee would not move any Committee Stage amendments ("CSAs"). Mr James TO had indicated intention to move amendments to impose an additional stamp duty on a sub-sale exceeding \$20 million. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 14 July 2010.

25. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 5 July 2010.

(c) **Interim report of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions**  
*(LC Paper No. CB(1) 2327/09-10)*

26. The Chairman said that Dr Margaret NG, Chairman of the Subcommittee, had made a verbal report at the last House Committee meeting. A written report was provided for the House Committee meeting.

**VIII. Position on Bills Committees and subcommittees**  
*(LC Paper No. CB(2) 1892/09-10)*

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

**IX. Proposal to seek the Legislative Council's authorization to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance to order the Administration to produce the correspondence between the Lands Department and the developer of 39 Conduit Road concerning the enquiry about the delayed transaction of the units of the development**  
*(Letter dated 22 June 2010 from Hon LEE Wing-tat to the Chairman of the House Committee (LC Paper No. CB(2) 1898/09-10(01))*

28. At the invitation of the Chairman, Mr LEE Wing-tat said that issues relating to the delayed transactions of some units of the development at 39 Conduit Road had raised wide public concern, and the Administration was investigating the matter. He had written to the Director of Lands four times requesting her to make public the six letters between the Lands Department ("LD") and the developer concerned, Henderson Land Development Company Limited ("Henderson Land"), relating to the transactions. He had also raised dozens of questions in his letters to LD. Regrettably, LD had failed to answer his questions. Concurrently, he had also written to the Secretary for Transport and Housing ("STH") and the Secretary for Development requesting them to release the relevant correspondence with the obliteration of the commercially sensitive information. However, the Bureau Secretaries and the Director of Lands had refused to release the correspondence. He therefore had no choice but to seek the Council's authorization to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration to produce the correspondence. He stressed that he was not proposing the appointment of a select committee but the Council's authorization to exercise the powers under Cap. 382 to order the production of the correspondence. Such correspondence would be useful to LegCo and the public in understanding the matter. He suggested that the Panel on Housing be authorized to exercise the powers to enable Panel members to obtain the correspondence.



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29. The Chairman drew to Members' attention a letter dated 24 June 2010 from STH to the Clerk to the Panel on Housing relating to the matter which was tabled at the meeting (LC Paper No. CB(1) 2365/09-10).

30. Mr Ronny TONG said that in principle he shared Mr LEE Wing-tat's view that given the serious nature and far-reaching implications of the matter, it was necessary for the public and LegCo to learn more about the matter. However, he doubted whether it would be useful to seek the authorization to exercise the powers to obtain the correspondence from the Administration. In his view, it should be the developer who should be ordered to produce all documents relevant to the matter to help Members gain a deeper understanding.

31. Mr LEE Wing-tat said that the Director of Lands had written to the developer seven times over the past few months seeking answers to dozens of questions concerning the transactions. He believed that the correspondence between LD and the developer would help the public and LegCo understand the matter. While there might be other relevant documents, he considered that as a first step, LegCo should obtain the correspondence between the Administration and the developer.

32. Mr WONG Kwok-hing, Chairman of the Panel on Housing, said that he had received a letter dated 18 June 2010 from Mr LEE Wing-tat requesting him to arrange a Panel meeting to discuss issues relating to the transactions and the need for transparency and fair play in the sale of private residential properties, and to invite the Administration to attend the meeting and provide the Panel with the relevant correspondence between LD and the developer. After receiving Mr LEE's letter, he had requested the Panel Clerk to forward it to the Transport and Housing Bureau for response. In accordance with the established procedures, he had arranged for Mr LEE's request to be discussed at the next Panel meeting to be held on 5 July 2010 for inclusion of the matter in the list of outstanding items for discussion. Mr WONG further said that STH had given a reply to the Panel Clerk on 24 June 2010. According to the reply, relevant Government agencies, including the Police, were investigating matters relating to the transactions. As the investigations were on-going, the Administration was not in a position to comment on the case or release correspondence between LD and the developer at this time. Mr WONG reiterated that Mr LEE's request, together with the Administration's reply, would be considered at the Panel meeting on 5 July and members would be consulted on the handling of the matter.

33. Mr WONG Kwok-kin shared Mr WONG Kwok-hing's views. He considered it necessary for LegCo to follow up the matter, having regard to the wide public concern. Apart from significant sums of money being involved, the transactions were also unusual as 20 out of the 24 transactions had been cancelled and the purchasers concerned were not asked to pay for the price differential. In his view, it would be more appropriate to have the matter followed up by the Panel on Housing first. The Administration should be requested to brief the Panel on the actions it had been taking and the time

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needed to report the outcome of its actions to the Panel. The Panel could then consider the need to refer the matter to the House Committee for further follow-up action.

34. The Chairman said that she would invite Members' views on the handling of Mr LEE Wing-tat's proposal after Members had expressed their views on the matter.

35. Mr CHAN Kam-lam said that he agreed that there was grave public concern about the matter. Concern had been raised on whether the rising property prices had anything to do with the information on the uncompleted transactions released by the developer. However, he did not consider it appropriate to request the Administration or the developer to provide the relevant documents at this stage as relevant Government agencies, including the Police, were investigating the matter. In his view, LegCo should await the completion of the investigation by the Administration. After the Administration had reported on the results of its investigation to LegCo, Members could request further information if considered necessary.

36. Mr CHAN Kam-lam further said that Mr James TO had also written to him, as Chairman of the Panel on Financial Affairs ("FA Panel"), requesting to discuss issues relating to the matter. The FA Panel would consider the request at its meeting on 5 July 2010. While appreciating Members' concern about the matter, he stressed the need for LegCo to act prudently. He was concerned that even if the Administration agreed to provide the correspondence to LegCo, such information might not be useful if a lot of information which were commercially sensitive were obliterated as suggested by Mr LEE Wing-tat. He reiterated that it was not the opportune time to seek the documents from the Administration.

37. Mr James TO said that he saw no reason why the Administration could refuse to provide the correspondence between LD and the developer with the obliteration of commercially sensitive information such as the names of the purchasers and the prices of the flats. In his view, evidence of fraud or faked transactions would not be found in the correspondence as LD had neither the evidence-taking nor investigative powers and LD was only requesting information from the developer on the relevant agreements on the sale of the uncompleted flats. He believed that Mr LEE Wing-tat was trying to obtain the correspondence for the purpose of ascertaining whether LD had been following up actively on the matter within its remit and whether it had sought the appropriate information from the developer, and Mr LEE was not seeking to monitor the investigation of the Police. Under such circumstances, Mr TO considered it grossly unacceptable for the Administration to have refused to provide such correspondence.

38. Mr James TO further said that as the Administration had already stated in its reply that it was not in a position to release the correspondence at this time because relevant Government agencies, including the Police, were investigating the matter, he considered it highly unlikely that the

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Administration would provide the correspondence to the Panel on Housing. In his view, the Panel on Housing had the responsibility to monitor whether LD had fulfilled its responsibility to seek the relevant information from the developer. Members would be failing to discharge their duties if such correspondence could not be obtained. He pointed out that while Mr LEE Wing-tat himself could move a motion to seek the Council's authorization to exercise the powers under Cap. 382 without the House Committee's support, the mere support of the House Committee for the moving of the motion and not the motion itself would drive the Administration to consider seriously providing such correspondence to the Panel on Housing for its meeting on 5 July. He reiterated that the information sought was fundamental. He appealed to Members to support Mr LEE Wing-tat's proposal.

39. Mr Tommy CHEUNG opined that even if Members were able to obtain the correspondence requested by Mr LEE Wing-tat, he could not see what LegCo could do about the matter at this stage. While acknowledging the public concerns about the transactions, he did not consider it a matter of urgency to decide on the invocation of the powers under Cap. 382 at the House Committee meeting, given that the Police had already initiated investigation into the matter and the Panel on Housing had scheduled to discuss it at its meeting on 5 July. He agreed that the matter should first be followed up by the Panel on Housing. He stressed that the Police's investigation should not be interfered with. He hoped that the Police could complete its investigation soon and report on its findings to LegCo. Should Members be dissatisfied with the results of the Police's investigation, they could take follow-up actions then. He reiterated that there was no urgency in making a decision on the invocation of the powers under Cap. 382 at the House Committee meeting.

40. Ir Dr Raymond HO said that it was understandable that the public wished to learn more about the relevant transactions. However, he stressed the importance for Members to act prudently in investigating matters relating to private corporations. He pointed out that the inquiries currently undertaken by two of the investigative committees of LegCo involved private corporations. As Chairman of one of these committees, he had exercised great care in handling the relevant issues. In his view, the matter was not as serious as the outbreak of SARS and did not warrant the conduct of parallel investigations by the Administration and LegCo. He reiterated the need to exercise prudence and take a step-by-step approach in investigating matters involving private corporations. Given that the Panel on Housing would discuss the matter at its meeting on 5 July, he agreed that it should be followed up by the Panel first. He considered it neither necessary nor urgent for LegCo to invoke the powers under Cap. 382 at this stage.

41. Mr Abraham SHEK declared interest that he represented the real estate and construction sector and Henderson Land was one of the electors of his functional constituency. While appreciating the public concern about the matter and the public's right to know, he cautioned that private contractual issues and commercial secrets were involved. He stressed that the powers under Cap. 382 should not be exercised lightly and such powers should only be

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invoked where significant public interest was involved. As the relevant Government agencies, including the Police and LD, were investigating the matter, the Administration would be held accountable to the public for its investigation. He queried the need for LegCo to request the documents from the Administration at this stage and whether individual Members had the expertise to look into the matter. He agreed to the view that LegCo should await the completion of the investigation by the Administration before considering the need to invoke the powers under Cap. 382.

42. Mr Jeffrey LAM said that he also noted the wide public concern on the matter. However, given that the matter would be discussed at the meeting of the Panel on Housing on 5 July and the relevant Government agencies, including the Police, were investigating the matter, he agreed that there was no urgency in requesting the provision of the correspondence at this stage. He considered that the normal channel for following up on a matter of public concern should be adhered to, and the matter should first be discussed by the Panel on Housing. Where further actions were deemed necessary by the Panel, the matter could be considered by the House Committee, including the invocation of the powers under Cap. 382. He did not consider it necessary for LegCo to invoke the powers under Cap. 382 at this stage.

43. Mr WONG Kwok-hing clarified that the matter was not scheduled for discussion at the meeting of the Panel on Housing on 5 July. As he had mentioned earlier, he would consult members at the meeting on the inclusion of the matter in the list of outstanding items for discussion. He stressed that he had handled Mr LEE Wing-tat's request in accordance with the relevant procedures.

44. Mr LEE Cheuk-yan did not subscribe to the view that individual Members did not have the expertise to look into the matter. He said that Members returned by the relevant functional constituencies should contribute their expertise during Members' discussions on the matter. Given the grave public concern about and the significant implications of the matter, he considered that LegCo had the right to obtain more information about the matter and Members should work together to look into it. He expressed support for Mr LEE Wing-tat's proposal.

45. While appreciating the wide public concern about the matter, Mr Paul TSE said that it was by nature a private matter involving private transactions in the private market. He said that owing to media coverage, many private matters had become matters of public concern. He queried whether LegCo should look into a private matter whenever the public had expressed concern about it. In his view, LegCo should only invoke the powers under Cap. 382 to investigate alleged dereliction of duty on the part of the Administration. Unless there was prima facie evidence showing that LD had failed to discharge its duties, LegCo should not bypass LD and investigate into the matter. Neither did he consider it appropriate for LegCo to conduct an investigation into a matter when relevant investigative agencies, such as the Police, were looking into it. He stressed that LegCo was already busy with a number of

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concurrent inquiries. He did not see any urgency in invoking the powers under Cap. 382 to order the production of the correspondence. He added that Members should focus on discussing the merits of the proposal and should not make cynical remarks about other Members.

46. Ms Audrey EU said that according to the Basic Law, LegCo did not only have the power to raise questions on the work of the Government, it could also debate any issue concerning public interests, among others. The Basic Law also provided that LegCo could summon, as required when exercising its powers and functions, persons to testify or give evidence. Hence, it was clearly not the case that LegCo could only exercise its powers under Cap. 382 to inquire into alleged dereliction of duty on the part of the Administration. For instance, in investigating issues relating to the Lehman Brothers-related minibonds, the relevant Subcommittee had summoned persons from the relevant banking institutions. It was indisputable that the matter, which was of wide public concern, fell within the remit of LegCo, in particular that of the Panel on Housing. It was not the case that LegCo would not conduct inquiries in parallel with the investigations conducted by the Administration. She stressed the importance for Members to discuss and follow up on matters of public concern as soon as possible. In her view, if LegCo had to await the completion of the Administration's investigation before inquiring into a matter, LegCo could hardly discharge its duties effectively. Referring to STH's letter, she considered it disrespectful of LegCo for the Administration to have refused to provide the correspondences to LegCo on the ground that it was investigating into the matter. The Administration should explain why the correspondence could not be released when it was investigating into the matter. She further said that she was not a member of the Panel on Housing. She agreed to the view that if time permitted, the matter should be discussed by the Panel first before putting forward to the House Committee for consideration.

47. Mr Paul CHAN shared the view that LegCo should follow up on the matter given that significant public interests were involved. While he agreed that one of the important functions of LegCo was to monitor the work of the Government, LegCo should not take up the work of the Government. He considered that LegCo should intervene only if the Administration had failed or refused to discharge its duties properly. For the matter in question, LegCo should allow reasonable time for the relevant Government agencies to handle it and report to LegCo. Should Members consider that the Government agencies had failed to handle the matter satisfactorily or had been dragging its feet, consideration could then be given to invoking the powers under Cap. 382. At the present stage, he considered it more appropriate for the Panel on Housing to follow up the matter and did not support the proposal for LegCo to exercise its powers under Cap. 382 to obtain the correspondence. However, he did not rule out the possibility of supporting such a proposal in future.

48. Mrs Sophie LEUNG expressed support for Mr LEE Wing-tat for raising the matter for discussion. She considered that whilst the possibility of LegCo exercising the powers under Cap. 382 in relation to the matter in future could not be ruled out, the established procedure should be followed and the matter

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should be discussed by the Panel on Housing first. After the Panel's discussion at its meeting on 5 July, the House Committee could follow up the matter if considered necessary. She recognized that the current session was drawing to a close but stressed the need to follow the established procedure in handling the matter.

49. Mr CHAN Kin-po agreed that the matter should be discussed by the Panel on Housing first given that the Administration was already investigating into it. He suggested that the various options put forth by Members for handling Mr LEE Wing-tat's proposal be put to vote.

50. The Deputy Chairman pointed out the many precedents where LegCo had conducted inquiries in parallel with the investigations conducted by the Administration into issues of public concern. Incidents relating to the opening of the Chek Lap Kok Airport, short-piling and the Lehman Brothers-related minibonds were cases in point. He said that the inquiries conducted by LegCo were different given their high public credibility and transparency. There had been no such practice for the Administration's investigations to have to be completed before LegCo embarked on its inquiry on an issue of public concern. While he respected the views of some Members on the need to obtain more information concerning the matter at this stage, he hoped that Members would be open-minded and ready to support the Panel on Housing to seek the authorization under Cap. 382 to obtain the relevant correspondence after the Panel had discussed the matter and considered it necessary to do so.

51. Mr WONG Sing-chi clarified that Mr LEE Wing-tat was not proposing the setting up of a select committee to inquire into the matter but the seeking of an authorization to exercise the powers under Cap. 382 to obtain certain documents.

52. Mr Ronny TONG did not agree with Mr Paul TSE's view that the matter involved private contracts only. He said that on the contrary, the matter was of public interest because of suspected market rigging. He considered it not necessary for LegCo to await the completion of criminal investigation by the Administration as LegCo was not concerned with this aspect. Neither did he consider it useful for the Panel on Housing to discuss the matter as the Administration had stated in its reply to the Panel that it was not in a position to comment on the matter or release the relevant correspondence at this time. As such, he agreed on the need to order the production of the relevant documents. He was concerned whether the exercise of the powers by LegCo under Cap. 382 would in any way be affected if a criminal investigation into the matter was underway. He sought legal advice in this regard.

53. Senior Assistant Legal Adviser 2 said that there was no provision in Cap. 382 disallowing the exercise of the powers by LegCo in respect of a matter in which a criminal investigation was underway.

54. Mr Ronny TONG reiterated that he considered it necessary to exercise the powers under Cap. 382 to obtain the relevant documents.

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55. Mr James TO said that LegCo was only carrying out its duties to monitor whether and how the Lands Department had followed up the matter. It was not unusual for LegCo to request the provision of certain information by the Administration on an issue of public concern so as to better understand the issue, and such requests did not imply that there had been default of duties on the part of the Administration. Mr TO stressed that the expression of wide public concern on the matter pointed to the need for LegCo to obtain the relevant correspondence. How the Police was investigating the matter was not the subject of enquiry by Mr LEE Wing-tat. In his view, both the scope of documents requested and the subject matters enquired by Mr LEE were confined.

56. Mr Abraham SHEK said that he fully understood the wide public concern on the matter. However, Members should not politicize it. He opined that if LegCo considered it necessary to follow up the matter, the proper procedure should be followed. In his view, it was appropriate for the Police and LD to investigate into the matter and for the Panel on Housing to discuss it first. The work of LegCo should not be tailored to suit the wish of individual Members.

57. Mr Paul TSE clarified that he did not object to parallel investigations by LegCo and the Administration on an issue of public concern. His concern was whether there was prima facie evidence to show default of duty on the part of any Government departments as to warrant an investigation by LegCo as in the cases of the opening of the Chek Lap Kok Airport, short-piling and the Lehman Brothers-related minibonds. He noted that there was no express provision in Cap. 382 disallowing the exercise of the powers by LegCo in respect of a matter in which a criminal investigation was underway. Nonetheless, he enquired whether LegCo had a convention or an established practice not to override the work of the investigative authorities.

58. The Chairman said that she did not recall any precedent where LegCo had overrode the work of the investigative authorities. If needed, further research might be conducted in this respect.

59. Mr LEE Wing-tat clarified that he was not seeking support for the conduct of an investigation by LegCo into the matter. He only proposed the seeking of LegCo's authorization to exercise the powers to obtain the relevant correspondence. He had been prudent in the handling of the matter. He pointed out that the Panel on Housing had not scheduled to discuss the matter at its meeting on 5 July. The Panel would only consider whether the matter should be put on its list of outstanding items for discussion. He further pointed out that STH had already stated in her reply to the Panel that the Administration would not release the relevant correspondence at this stage.

60. Mr LEE Wing-tat then explained why he considered it necessary to take urgent action to seek LegCo's authorization to exercise the powers under Cap. 382. He said that the last Council meeting for the current session would be

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held on 14 July, and the deadline for giving notice for moving a motion at that meeting was 28 June. Should the motion for the authorization not be moved at that Council meeting, he would have to wait until the next session commencing in October 2010. He therefore could not wait for the matter to be discussed first by the Panel on Housing if he intended to move the motion on 14 July. He indicated that even if the House Committee did not support his proposal for moving the motion, he would still give notice on 28 June for moving the motion on 14 July.

61. The Chairman said that any Member had the right to move such a motion.

62. Mr WONG Kwok-hing said that as Chairman of the Panel on Housing, he considered it necessary to consult members of the Panel on any individual member's proposal. Should Panel members consider it necessary to discuss the matter under "Any other business" or to convene a special meeting to discuss it, he would act in accordance with the members' view.

63. Mr James TO said that it was for the Panel on Housing to decide the agenda for its meetings. As Mr LEE Wing-tat had put up his proposal to the House Committee for consideration, he suggested that the House Committee might consider writing to LD requesting the release of the relevant correspondence to the Panel on Housing for follow up. Should LD release the correspondence, there would be no need for the moving of the motion.

64. The Chairman said that as Mr James TO's proposal was different from that of Mr LEE Wing-tat, another round of discussion might be required if Mr TO's proposal was to be pursued.

65. Dr Margaret NG said that the chairman of a Panel could decide whether an item should be added to an agenda for a meeting. As Chairman of the Panel on Housing, Mr WONG Kwok-hing could decide to include the matter onto the agenda for the Panel meeting on 5 July if he considered that most Panel members would wish to discuss it. In the meantime, he could ask the Panel Clerk to inform the Administration that the matter would be discussed at the Panel meeting on 5 July and to ask for a response from the Administration. Dr NG considered that such an approach could save time.

66. Mr WONG Kwok-hing said that he would consider Dr Margaret NG's view and discuss with the Panel Clerk the arrangements for the Panel meeting on 5 July. If necessary, the Panel meeting could be extended.

67. Concluding the discussions, the Chairman said that the proposal of Mr LEE Wing-tat was to seek the support of the House Committee for LegCo's authorization to exercise the powers under Cap. 382 to obtain the relevant correspondence concerning the delayed transaction of the units of the development at 39 Conduit Road. According to the established practice, should the House Committee support such a proposal, a subcommittee would normally be set up to study the scope of documents to be ordered for



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production. A motion for the authorization to exercise the powers would then be moved at a Council meeting. The Chairman pointed out that should the House Committee not support Mr LEE Wing-tat's proposal, he, like any other individual Members, had the right to move such a motion.

68. The Chairman further said that Members had expressed diverse views on Mr LEE Wing-tat's proposal. Some Members supported the proposal; some objected to it; and some considered it appropriate for the matter to be first discussed by the Panel on Housing. She gathered from the discussions that most Members considered it appropriate for the matter to be first discussed by the Panel on Housing and then by the House Committee if necessary. She invited Mr LEE's view on the handling of his proposal.

69. Mr LEE Wing-tat said that he respected Members' views and the reservation of some Members about the exercise of the powers under Cap. 382 at the current stage. As he could not afford to wait until the next session for moving the motion, he would give notice for moving the motion at the Council meeting on 14 July 2010. He would also liaise with Mr WONG Kwok-hing concerning the discussion on the matter at the Panel meeting on 5 July.

70. There being no other business, the meeting ended at 7:30 pm.

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