

立法會  
*Legislative Council*

LC Paper No. CB(2) 777/10-11

Ref : CB2/H/5/10

**House Committee of the Legislative Council**

**Minutes of the 10th meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 7 January 2011**

**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 WONG Yung-kan, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LI Fung-ying, SBS, 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 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 Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Hak-kan  
Hon CHAN Kin-por, JP  
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  
Hon Mrs Regina IP LAU Suk-ye, 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 LEUNG Kwok-hung  
Hon Tanya CHAN  
Hon Albert CHAN Wai-yip  
Hon WONG Yuk-man

**Members absent :**

Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Andrew CHENG Kar-foo  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Paul CHAN Mo-po, MH, JP  
Dr Hon Priscilla LEUNG Mei-fun

**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 4
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 LOO	Assistant Legal Adviser 3
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 verbatim transcript/minutes of meetings**

**(a) Verbatim transcript of the special meeting held on 10 December 2010**

*(LC Paper No. CB(2) 723/10-11)*

**(b) Minutes of the 9th meeting held on 17 December 2010**

*(LC Paper No. CB(2) 724/10-11)*

The two sets of verbatim transcript/minutes were confirmed.

**II. Matters arising**

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

Chief Executive Election (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010

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2. The Chairman said that as she was out of town during the period, she invited the Deputy Chairman to report on the meeting with CS.

3. The Deputy Chairman said that he had conveyed to CS Members' request for the Administration to provide Members with the documents relating to the amendments made to Annexes I and II to the Basic Law ("BL") before the commencement of work of the relevant Bills Committee. CS had agreed to follow up the matter. The Deputy Chairman added that the Administration had provided the relevant documents which had been issued to Members on 3 January 2011.

## Companies Bill

4. The Deputy Chairman further said that CS had indicated that the Administration would soon introduce into the Legislative Council ("LegCo") the Companies Bill which was complex. As the Bill contained a total of 919 clauses, the Law Draftsman had proposed the adoption of a new numbering system under which each clause would first be numbered according to the part of the Bill it was subsumed and then consecutively within its part. In other words, the clauses in the Bill would be numbered "1.1", "1.2" and so on instead of the current Arabic numerals of "1", "2", etc.

5. The Deputy Chairman said that he had told CS that the Administration should consult the Panel on Administration of Justice and Legal Services ("AJLS Panel") before adopting the new numbering system. He had also told CS that as the new numbering system was not in conformity with the requirement under Rule 50(6) of the Rules of Procedure ("RoP"), the Administration should seek the views of the LegCo Secretariat; and it might also be necessary for the Committee on Rules of Procedure ("CRoP") to consider the matter. The Deputy Chairman added that after his meeting with CS, the Administration had advised the Secretariat that the new numbering system would not be used for the Companies Bill. Nevertheless, given that the Administration had indicated its intention to introduce the new numbering approach, Members might wish to consider how to follow up the matter.

6. Dr Margaret NG said that while the AJLS Panel had been briefed on the changes to drafting practices and styles introduced by the Administration, it had not been consulted on the proposed new numbering system. In her view, the proposed numbering system might not be in conformity with RoP 50(6) which provided that a bill should be "divided into clauses numbered consecutively", and the Secretariat was not empowered to process a bill which did not conform to the relevant requirement under RoP. The matter could not be dealt with by the relevant Bills Committee as the Bills Committee did not have the power to amend RoP. She opined that should the Administration wish to introduce the new numbering system, the matter should be discussed not only by the AJLS Panel as it was of concern to all Members. She considered it necessary for Members to discuss how to handle the matter.

7. The Chairman said that as the Administration had decided not to use the new numbering system for the Companies Bill, the question of whether the form of the Bill was in compliance with the requirement under RoP 50(6) would not arise. She stressed that should the Administration plan to adopt a new numbering system in future, it would have to consult LegCo beforehand and discuss the matter thoroughly with Members. Members could then consider whether the matter should be followed up by CRoP, the House Committee, a subcommittee appointed under the House Committee or other LegCo committees.

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8. Dr Margaret NG considered it necessary for Members to discuss the issues involved in the new numbering system so that they could decide on the proper channel for following up the matter when it was raised by the Administration in future.

9. The Chairman said that she would convey to CS the need for the Administration to consult Members first should it plan to introduce the new numbering system. She requested the Secretariat to prepare a paper on the issues involved to facilitate Members' consideration of the appropriate channel for following up the matter.

Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the Order")

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10. The Chairman said that the President had written to her on 5 January 2011 enclosing a letter dated 4 January 2011 from CS regarding the Order. In his letter, CS informed the President of the Administration's decision not to seek judicial review of the resolution passed by LegCo on 13 October 2010 to repeal the Order. She further said that pursuant to the decision of the House Committee, the Secretariat was preparing a paper on the appointment of a subcommittee under the House Committee to study matters relating to the power of LegCo to amend subsidiary legislation for the House Committee's consideration at its meeting on 21 January 2011.

11. Ms Audrey EU expressed dissatisfaction with CS's letter. She said that CS had indicated in his letter that the Administration maintained its view that LegCo did not have power to repeal the Order and the resolution passed by LegCo to repeal it lacked legal basis. She considered that this was a serious constitutional issue as the Administration and LegCo held different views on the lawfulness of repealing the Order. She was concerned that despite the Administration reaffirming its legal views, it had decided not to take the matter to court on the ground of maintaining a good relationship between the Executive Authorities and the Legislature. However, with its continued claim in public that the resolution passed by LegCo was unlawful, the Administration had not only damaged its relationship with LegCo but had also given the public a negative perception of the rule of law in Hong Kong. In her view, the Administration should, in respecting the rule of law, either withdraw its claim or take the matter to court. She considered the Administration's handling of the matter unacceptable and that it had dealt a severe blow to the rule of law in Hong Kong.

12. The Chairman invited Members' views on the way for following up the matter.

13. Mr Albert CHAN said that the Administration's handling of the matter had seriously damaged the governance and judicial system of Hong Kong and had severely tarnished the image of the Executive Authorities. It had also given the wrong impression that the Legislature was above the law. He did not subscribe to the Administration's legal views on the lawfulness of repealing the Order. He shared the view that it was a serious constitutional issue which should not be left unresolved, and suggested that CS be invited to discuss the matter with the House Committee. He considered that the Administration should either admit that its legal views were wrong or take the matter to court but it should not leave the matter unresolved on the pretext of maintaining a good relationship between the Executive Authorities and the Legislature, as this would damage the reputation of both parties.

14. Mr Ronny TONG said that CS should be reminded that if the resolution passed by LegCo was unconstitutional, the decision of the Administration not to take the matter to court on the pretext of maintaining a good relationship with the Legislature could not in itself reverse the constitutionality of the resolution. Nevertheless, he did not consider it appropriate for LegCo to issue a strong-worded reply to CS or for the matter to be taken to court, in the interests of the Executive Authorities and the Legislature. He opined that it was understandable that different counsel might have different legal opinions on the same matter. The Administration could hold certain legal opinions provided by its counsel on the matter. However, if there were different legal opinions and the Administration was convinced that its opinions were correct, it should seek a ruling from the court to affirm their correctness.

15. Mr LEUNG Kwok-hung considered that the Administration had adopted different approaches in handling contravention of law cases. He pointed out that the Department of Justice had invariably instituted prosecution proceedings against him for contravention of law, and it was for the court to make a judgment. However, in respect of the Order, while the Administration maintained that the repeal of the Order by LegCo was unconstitutional, it had decided not to take the matter to court. He opined that in so doing, the Administration had practically deprived LegCo of the opportunity to argue its case. In his view, if the Administration considered that the repeal of the Order by LegCo was unconstitutional, it should seek a ruling from the court. He considered it necessary for the Administration to clarify the basis of its decision.

16. Dr Philip WONG said that in Hong Kong, there was separation of powers between the Executive Authorities, the Legislature and the Judiciary. In his view, should the Executive Authorities apply to the court for judicial review on the matter, it might convey a wrong message that the Judiciary was above the Executive Authorities and the Legislature. As a LegCo Member, he hoped that this could be avoided.

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17. Mr IP Kwok-him said that CS had set out in his letter the Administration's views on the matter. While he did not agree with such views, the Administration's handling of the matter should not be taken as ill-intended. He considered it more appropriate for the President to set out in his reply to CS LegCo's views on the matter to make LegCo's stance clear to the public. He shared the view that taking the matter to court was not the best way to resolve the matter.

18. Mr Albert HO said that it was not the first time the Administration had handled divergence of views with LegCo on certain matters. He recalled that in the dispute concerning Article 74 of BL, the Administration had taken the view that Members did not have power to propose certain amendments and had threatened to take the matter to court but it had not done so eventually. He opined that the court was vested with the authority to make judicial interpretation of the laws enacted by the Legislature, and such interpretation was binding. This was indeed a manifestation of separation of powers. In his view, unless the Executive Authorities challenged the legality of the resolution passed by LegCo to repeal the Order, the Executive Authorities would be taken as accepting the lawfulness of the repeal of the Order and it should abide by the legal effect of the repeal. If the Administration maintained that the repeal of the Order by LegCo was unconstitutional, it had the right as well as the responsibility to seek a ruling of the court. The inaction on the part of the Executive Authorities would affirm the lawfulness of the repeal of the Order by LegCo and strengthen the convention of LegCo in this regard. In his view, conveying such views to CS in the reply would suffice.

19. Dr Margaret NG did not consider it necessary for the Administration to seek judicial review on the matter. She considered that the Administration had handled the matter poorly and its reputation had been damaged as a result. She said that there was a presumption of regularity that the laws enacted by the Legislature were valid unless proven otherwise. The resolution passed by LegCo to repeal the Order was published within the statutory period. It should be deemed as valid. She criticized the Administration for continuing to claim that the resolution lacked legal basis. In her view, instead of continuing to assert the correctness of its legal views, the Administration could have brought the matter to a close by saying that while it respected LegCo's position on the matter and had dispensed with the use of the country park land concerned as landfill site, it had reservations on the matter.

20. Mr Paul TSE said that if Members' only concern was to uphold the dignity and preserve the power of LegCo, he agreed that it would suffice for LegCo to clarify its stance in the President's reply to CS. However, if the concern was also related to the Administration's credibility, then he

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shared some Members' view that it was necessary to resolve the matter. In his view, the Administration could consider three possible courses of actions. First, if the Administration was unsure about its legal views, it could say that there were grey areas in the legal issues involved and further elaborate its views on the matter. Second, if the Administration was convinced that its legal views were correct, it should take the matter to court to seek a declaration to that effect. Third, the Administration could also initiate a review on the relevant legal issues to prevent recurrence of similar cases in future. He considered it highly undesirable for the Administration to leave the matter unresolved.

21. Mr Ronny TONG considered it important for the public not to be left in doubt about the legality or constitutionality of the resolution passed by LegCo to repeal the Order. He requested the Legal Adviser ("LA") to confirm that the resolution passed by LegCo to repeal the Order, which had gone through due process and had been gazetted by the Administration, was both constitutional and legal, irrespective of the Administration's views on the matter. LA's confirmation should be included in the President's reply to CS. He stressed that the public must not be left in doubt about the constitutionality of LegCo's acts.

22. Ms Emily LAU said that as the Executive Authorities and the Legislature were separate entities, it was entirely within the Administration's purview to decide how it should deal with the matter. She shared Mr Albert HO's view that LegCo should adopt the same approach as that used in handling the dispute concerning Article 74 of BL. She said that the Subcommittee appointed to study the Order had already examined thoroughly the relevant issues. She did not see the need for LegCo to further discuss the matter or seek further legal opinions. She agreed that it would suffice to set out LegCo's views on the matter in the reply to CS. Noting CS's claim in his letter that neither LegCo nor CE had the power to repeal the Order, she considered such a situation absurd and cautioned that similar cases might recur in future.

23. The Chairman said that she gathered from the discussions that most Members agreed that it would suffice to convey LegCo's stance on the matter to CS in the reply.

24. Dr Margaret NG agreed with Mr Ronny TONG on the importance of not leaving the public in doubt as to whether LegCo had acted unconstitutionally. She said that the presumption of regularity was a very important principle. It was her understanding that the resolution to repeal the Order had gone through the proper procedures and had legal effect. She requested LA to confirm her understanding.



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25. At the invitation of the Chairman, LA confirmed that in so far as the processing of the Order was concerned, the Legislature had, by virtue of the powers vested under the Interpretation and General Clauses Ordinance (Cap. 1), followed the due process in the passage of the resolution to repeal the Order. The relevant resolution had been published in the Gazette in accordance with the Ordinance. Unless there was a judicial ruling to the contrary which had binding authority, it was presumed under the law that the resolution passed by LegCo as published in the Gazette had and would continue to have legal effect.

26. The Chairman said that LA's confirmation as well as LegCo's stance on its power to repeal the Order and the bases of such views would be conveyed to CS in the President's reply.

27. Dr Margaret NG considered it not necessary and meaningless to reiterate in the reply LegCo's stance on its power to repeal the Order. LegCo had already formed its views. In her view, it would suffice to convey to CS that LegCo had exercised its legislative power both constitutionally and legally, and that the resolution passed by LegCo was presumed to have legal effect, unless its legality had been overruled by the court.

28. Mr IP Kwok-him said that in view of the diverse views expressed by Members, the draft reply to CS could be provided to Members for consideration.

29. At the invitation of the Chairman, Secretary General said that unless Members proposed specific wording of the reply for the President's consideration, the President would prepare a reply himself taking into account Members' views.

30. Dr Margaret NG said that as CS's letter was addressed to the President, it was for the President to decide how to reply, taking into account the views expressed by Members.

31. The Chairman said that the views expressed by Members would be conveyed to the President for his consideration, and the President's reply would be copied to Members for information.

### **III. Business arising from previous Council meetings**

- (a) **Legal Service Division report on subsidiary legislation gazetted on 24 December 2010 and tabled in Council on 5 January 2011**  
(*LC Paper No. LS 19/10-11*)

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32. The Chairman said that only one item, i.e. the Employees Retraining Ordinance (Amendment of Schedule 2) (No. 4) Notice 2010, was gazetted on 24 December 2010 and tabled in the Council on 5 January 2011.

33. Members did not raise any queries on this item of subsidiary legislation.

34. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 26 January 2011.

(b) **Legal Service Division report on subsidiary legislation gazetted on 31 December 2010 and tabled in Council on 5 January 2011**  
(*LC Paper No. LS 21/10-11*)

35. The Chairman said that three items of subsidiary legislation, including two Commencement Notices, were gazetted on 31 December 2010 and tabled in the Council on 5 January 2011.

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

37. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 26 January 2011.

**IV. Business for the Council meeting on 12 January 2011**

(a) **Tabling of papers**

**Report No. 10/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments**  
(*LC Paper No. CB(2) 726/10-11 issued vide LC Paper No. CB(3) 384/10-11 dated 6 January 2011*)

38. The Chairman said that the report covered 10 items of subsidiary legislation the period for amendment of which would expire on 12 January 2011. No Member had requested to speak on the subsidiary legislation.

39. Members noted the report.

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(b) **Questions**

*(LC Paper No. CB(3) 370/10-11)*

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

(c) **Bills - First Reading and moving of Second Reading**

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

(d) **Government motion**

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

(e) **Members' motions**

(i) **Proposed resolution to be moved by Hon James TO Kun-sun under Rule 78(1) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 352/10-11 dated 30 December 2010.)*

43. The Chairman said that the speaking time limit for each Member was 15 minutes.

(ii) **Motion on “Legislating for regulating allied health staff to protect public health”**

*(Wording of the motion issued vide LC Paper No. CB(3) 346/10-11 dated 29 December 2010.)*

(iii) **Motion on “Post-office employment arrangements for politically appointed officials”**

*(Wording of the motion issued vide LC Paper No. CB(3) 347/10-11 dated 29 December 2010.)*

44. The Chairman said that the above two motions would be moved by Dr Joseph LEE and Dr Margaret NG respectively and the wording of the motions had been issued to Members.

45. The Chairman further said that the deadline for giving notice of amendments to the three Members' motions had expired on 5 January 2011.

**V. The Chief Executive's Question and Answer Session on 13 January 2011**

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

**VI. Business for the Council meeting on 19 January 2011**

**(a) Questions**

*(LC Paper No. CB(3) 369/10-11)*

47. 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**

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

**(c) Government motion**

**Proposed resolution to be moved by the Secretary for Food and Health under the Pharmacy and Poisons Ordinance relating to:**

**(i) the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2010; and**

**(ii) the Poisons List (Amendment) (No. 5) Regulation 2010**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 371/10-11 dated 4 January 2011.)*

*(LC Paper No. LS20/10-11)*

49. The Chairman said that the proposed resolution was for seeking LegCo's approval of the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2010 and the Poisons List (Amendment) (No. 5) Regulation 2010 to add four substances in Division A in both the First and Third Schedules to the Pharmacy and Poisons Regulations and to Division A in Part I of the Schedule to the Poisons List Regulations respectively, and to amend the Chinese name of a substance. The addition of the four substances to the Poisons List Regulations meant that poisons containing these substances could only be sold on registered premises of an authorized seller by a registered pharmacist or in the pharmacist's presence and under the pharmacist's supervision.

50. Members did not raise any objection to the Administration moving the proposed resolution at the Council meeting.

**(d) Members' motions**

**(i) Motion to be moved by Hon Paul CHAN Mo-po**

51. The Chairman said that the subject of the motion to be moved by Mr Paul CHAN was "Reviewing public finances policies".

**(ii) Motion to be moved by Hon LEE Wing-tat**

52. The Chairman said that the subject of the motion to be moved by Mr LEE Wing-tat was "Improving primary health care".

53. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 12 January 2011.

**VII. Position on Bills Committees and subcommittees**

*(LC Paper No. CB(2) 725/10-11)*

54. The Chairman said that there were 14 Bills Committees, three subcommittees on policy issues under the House Committee and eight subcommittees under Panels in action.

**VIII. Priority allocation of a debate slot to the Panel on Welfare Services**

*(LC Paper No. CB(2) 721/10-11)*

55. Mr CHEUNG Kwok-che, Chairman of the Panel on Welfare Services ("the Panel"), said that the Panel discussed the Government's response to and follow-up actions on the 23 recommendations in the Equal Opportunities Commission's Formal Investigation Report on Accessibility in Publicly Accessible Premises ("EOC Report") at its meeting on 13 December 2010. Although the Administration had worked out a consolidated retrofitting programme for the premises and facilities concerned, the Panel considered that a motion for debate should be moved to enable Members to express their views on the subject and the Administration to provide its response to the recommendations in the EOC Report and make a commitment on the implementation timetable of the retrofitting programme.

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56. Mr CHEUNG Kwok-che further said that the Panel sought the House Committee's support for the priority allocation of a debate slot to him, as its Chairman, under House Rule 14A(h) for moving a motion for debate on the EOC Report at the Council meeting of 26 January 2011. The wording of the motion was set out in the Appendix to the Panel's paper. Should the House Committee accede to the request, the Panel also proposed that the speaking time limit for the debate should be 15 minutes for each Member and there should only be one other motion debate without legislative effect at the Council meeting. He appealed to Members to support the Panel's requests.

57. Ms Emily LAU expressed support for the Panel's requests in view of the importance of the EOC Report.

58. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") did not support the request for the priority allocation of a debate slot for moving a motion on the EOC Report. He pointed out that the Government published from time to time reports on issues many of which were of public concern. It was difficult to determine which reports should be given priority for discussion. In addition, as the Panel had suggested that there should only be one other motion debate without legislative effect at that Council meeting, the opportunities of Members for moving a motion for debate at the Council meeting would be affected should the request be acceded to. If more than two Members' motions were to be held at the same Council meeting, the meeting would be prolonged. He considered it necessary for Members to consider carefully the criteria for priority allocation of debate slots. In his view, such requests should only be acceded to if the subject matter was of wide public concern. He did not see much difference between the EOC Report and other Government reports.

59. Mr WONG Sing-chi said that Members belonging to the Democratic Party ("DP") supported the request. He pointed out that the Administration had all along not attached much importance to the realisation of a barrier-free environment for persons with disabilities. It was not until the Equal Opportunities Commission ("EOC") had conducted a formal investigation to examine the progress of such realisation programme did the Administration take forward the matter. He considered it important for Members to express their views on the recommendations made in the EOC Report. He did not agree with the view that Members' opportunities for moving a motion debate would be affected should the House Committee accede to the request. It was his understanding that not many Members had made applications for the allocation of debate slots at recent Council meetings, and Members belonging to DP did not have difficulties in securing debate slots at Council meetings.

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60. Mr Frederick FUNG declared interests as a member of the Board of EOC. He expressed support for the Panel's request for priority allocation of a debate slot for moving a motion debate on the EOC Report, as the recommendations in the Report would have significant implications on the well-being of persons with disabilities. He pointed out that EOC had also identified in the Report many blackspots in the publicly accessible premises owned or managed by Government departments, the Hong Kong Housing Society, The Link Management Limited ("The Link") and the Housing Authority, and a debate on the Report would put pressure on the Administration to take improvement measures. He added that he did not have strong views on whether there should be one or two other motion debates without legislative effect at the Council meeting.

61. Mr CHEUNG Kwok-che said that the Administration had undertaken to retrofit 3 306 Government premises and facilities within 18 months, and the Panel had expressed doubt as to whether the Administration could fulfil its undertakings. He further pointed out that the Government had no control over the retrofitting works recommended for the publicly accessible premises owned or managed by The Link. He stressed that a motion debate in the Council on the EOC Report would not only promote public understanding of the Report, but would also help address the issues relating to the retrofitting work on publicly accessible premises owned or managed by The Link. He added that he did not object to having two other motion debates without legislative effect at the Council meeting should Members so wish. He appealed to Members to support the Panel's request for priority allocation of a debate slot.

62. Ms Audrey EU said that Members belonging to the Civic Party supported the Panel's request. They also supported more discussions on issues relating to persons with disabilities in the Council, and were of the view that a motion debate on the EOC report would provide an opportunity for Members to express their views on the subject. She added that Members belonging to the Civic Party would go along with having two other motion debates without legislative effect at the Council meeting.

63. Ms Emily LAU said that according to the established mechanism, a Panel could request priority allocation of a debate slot to its chairman for moving a motion on a particular report. Although the Government published reports on important issues from time to time, Members only discussed some of them on a need basis. She noted that Mr IP Kwok-him was not suggesting the abolition of such a mechanism. She pointed out that when considering the procedures for priority allocation of debate slot, it had been agreed that not more than two debates initiated by Members should be held at a regular Council meeting. While the House

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Committee could recommend to the President the holding of more than two debates at a particular Council meeting, she did not support such a move.

64. Ms Emily LAU shared the concern about the Administration's undertaking to retrofit 3 306 Government premises/facilities in a short period of time. She further said that Mr CHEUNG Kwok-che, as Chairman of the Panel, would soon seek the endorsement of the House Committee for activating a subcommittee to be appointed under the Panel for monitoring the progress of the retrofitting programmes to be implemented by the Administration. The improvements to be carried out at the premises and facilities concerned would bring benefit to the community, including persons with baby carts and the elderly. She appealed to Mr IP Kwok-him to support the request.

65. Mrs Sophie LEUNG said that Members had all along been concerned about the realisation of a barrier-free environment for persons with disabilities and the relevant issues had been discussed on many occasions. She did not support the holding of more than two motion debates without legislative effect at a Council meeting as Members were already very busy. She noted with concern the participation of very few Members in the debates held at the preceding Council meeting, as this affected the quality of the debates and the public perception of LegCo. She called on Members to consider carefully when making requests for priority allocation of a debate slot. In her view, whether or not such a request should be supported should be based on the merits and not the political affiliations of the Member concerned to avoid the creation of an impression of disparity of treatment.

66. The Chairman said that Members had agreed to the mechanism for priority allocation of a debate slot to a Panel for moving a motion on a consultation document published by the Government, and requests which were normally not in relation to a consultation document would be considered by the House Committee on a case-by-case basis. While normally not more than two debates without legislative effect should be held at a Council meeting, more than two such debates might be allowed by the President upon the recommendation of the House Committee.

67. Mr IP Kwok-him clarified that while he considered it necessary to discuss the issue of realisation of a barrier-free environment for persons with disabilities, his concern was about the mechanism for priority allocation of a debate slot. He did not subscribe to the view that the House Committee should accede to the request concerned because applications for the allocation of a debate slot were few. In his view, Members who wished to debate the subject concerned could consider other means.



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68. Mr Paul TSE declared interests as a member of the Board of EOC. He was concerned about the setting of precedents should the House Committee relax the established criteria for priority allocation of a debate slot. In his view, Members should consider the principle and not the number of Members who had made applications for the allocation of a debate slot. More Members might consider moving a motion for debate on a certain subject if they noted that the applications for the allocation of a debate slot were few. He considered it important to make clear the principle for priority allocation of a debate slot. He added that individual Members could consider moving a motion for debate on the EOC Report.

69. The Chairman put to vote the Panel's proposal for priority allocation of a debate slot to its Chairman for moving a motion on the EOC Report at the Council meeting of 26 January 2011. The results were: 23 Members voted for and 14 Members voted against the proposal and one Member abstained. The Chairman declared that the proposal was supported.

70. The Chairman then invited Members' view on whether there should be one or two other motion debates without legislative effect at the Council meeting.

71. Mr Abraham SHEK said that he considered it appropriate for the holding of two other motion debates without legislative effect as this would not reduce the opportunity of Members in being allocated a debate slot. He proposed the holding of two other motion debates in addition to the motion debate on the EOC Report at the Council meeting.

72. Mr IP Kwok-him said that as the duration of Council meetings was already long, he considered that only one other motion without legislative effect should be held at the Council meeting.

73. Noting Members' diverse views on the matter, Mr Abraham SHEK withdrew his proposal.

74. The Chairman concluded that only one other motion debate without legislative effect would be held at the Council meeting.

**IX. Enhancement of communication with the 18 District Councils**

*(LC Paper No. CB(4) 1/10-11)*

75. The Chairman said that the paper sought Members' advice on the proposal to further enhance the communication with the 18 District Councils ("DCs"). In addition to the current arrangement of Members'

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meetings-cum-luncheons with the 18 DCs, it was proposed that a luncheon with the Chairmen and Vice-Chairmen of the 18 DCs be held as a trial scheme in mid-March or mid-April 2011 with all Members invited to attend. Members agreed to the proposal.

76. The Chairman said that the Secretariat would proceed to make arrangements for the proposed luncheon with the 18 DCs.

**X. Proposed overseas duty visit to the United Kingdom by the Public Accounts Committee ("PAC")**  
(*LC Paper No. PAC 60/10-11*)

77. Dr Philip WONG, Chairman of the Public Accounts Committee ("PAC"), said that PAC planned to undertake an overseas duty visit to London and Edinburgh of the United Kingdom ("UK") from 19 to 26 March 2011 to study the operation and experiences of the Committee of Public Accounts of the House of Commons ("the Commons PAC") of the UK Parliament and the Public Audit Committee of the Scottish Parliament ("the Scottish PAC").

78. Dr Philip WONG further said that during the visit, arrangements would be made for the delegation to observe the public hearings of the Commons PAC, and meet and exchange views with Members of the Commons PAC and the Scottish PAC as well as representatives of related bodies, including the National Audit Office, the HM Treasury, the UK Audit Commission and Audit Scotland.

79. Members noted the planned overseas duty visit and approved the charging of the expenditure for the visit to individual Members' Overseas Duty Visit accounts.

**XI. Proposal from Hon LEUNG Kwok-hung for moving a motion for adjournment under Rule 16(4) at the Council meeting on 12 January 2011 for the purpose of debating the following issue: the HKSAR Government's handling on humanitarian grounds of matters relating to overseas pro-democracy figures' entry into Hong Kong for mourning the death of Mr SZETO Wah**  
(*Letter dated 5 January 2011 from Hon LEUNG Kwok-hung to the Chairman of the House Committee (LC Paper No. CB(2) 752/10-11(01))*)

80. At the invitation of the Chairman, Mr LEUNG Kwok-hung said that some overseas pro-democracy figures had not been allowed entry into Hong Kong for a considerable period. Some of them wished to come to Hong Kong to mourn for the death of Mr SZETO Wah, a former

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LegCo Member, and had said in public that they would undertake to engage solely in the mourning for the death of Mr SZETO Wah. Mr LEUNG noted with concern that the Secretary for Security ("S for S") had said that mourning did not necessarily have to take place in Hong Kong, suggesting that these pro-democracy figures might be refused entry. He appealed to Members to support his proposal for moving a motion for adjournment at the Council meeting of 12 January 2011 for the purpose of enabling Members to express views on the subject.

81. The Chairman said that according to Rule 16(6) and (7) RoP and rule 18(b) of the House Rules, the duration of an adjournment debate was kept within one and a half hours. She sought Members' views on Mr LEUNG Kwok-hung's proposal.

82. Mr IP Kwok-him said that Mr SZETO Wah had participated in community affairs for more than 30 years and had won the respect of Hong Kong people. While the general public would welcome the facilitation of his good friends and members of the public to attend the various mourning activities, DAB considered that the holding of the proposed adjournment debate would not help to achieve the purpose. On the contrary, it would complicate the matter and reduce the chance of the purpose being achieved. Mr IP further said that after assessment, Members belonging to DAB would not support the proposal.

83. Mr Paul TSE said that he had all along considered it appropriate to be lenient in handling such kinds of immigration applications. Nevertheless, he was concerned whether the proposal would set a bad precedent for inappropriate intervention with the discretion of S for S. He was worried that the same approach would be taken in future should a certain person be refused entry into Hong Kong. He was also concerned about the aspect of application of humanitarian grounds. According to his understanding, the approval of certain applications on humanitarian grounds should apply to close relatives of the persons concerned. He stressed that he was not targeting at the pro-democracy figures but was concerned about the setting of a bad precedent.

84. Ms Audrey EU said that the Civic Party had petitioned to the Chief Executive to allow on humanitarian and human right grounds the pro-democracy figures to come to Hong Kong to mourn for the death of Mr SZETO Wah and to pay tribute to him. In her view, the application of humanitarian grounds should not be confine to close relatives of the persons concerned. It should apply to persons who had a great impact on one's life. She pointed out that the rescue action participated by the Hong Kong Alliance in Support of Patriotic Democratic Movements of China had changed the life of many pro-democracy figures who wished to pay their last respect and tribute to Mr SZETO Wah. She considered

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that the approval of their applications for coming to Hong Kong complied entirely with the criteria for humanitarian grounds. The permission of their entry into Hong Kong was also in order on human right grounds given the upholding of freedom of movement in Hong Kong. Ms EU further said that the pro-democracy figures concerned had undertaken in public that they would comply with the conditions for entry. It would be a good opportunity for demonstrating to the world the implementation of the principle of one-country-two-systems in Hong Kong. Ms EU added that Members belonging to the Civic Party had not the slightest intention of taking any action which might prejudice the chance of the pro-democracy figures to come to Hong Kong. It had all along been their stance that as LegCo Members, they had an obligation to facilitate the expression of views on matters of public concern in LegCo. Based on these considerations, Members belonging to the Civic Party supported the proposal.

85. Mr James TO allayed the concern about the setting of a precedent. He pointed out that no question would be put on the adjournment debate at the Council meeting. Moreover, the subject of the adjournment debate had not identified any individual pro-democracy figures. The concern about the focus of the debate on individual cases should therefore not arise. He pointed out that questions had been raised in the Council in the past concerning the refusal of entry of certain persons to Hong Kong. In his view, it was more justifiable to apply humanitarian grounds to persons who had saved one's life than to one's distant relatives. Mr SZETO Wah had been the life-saver to many pro-democracy figures.

86. Mr WONG Kwok-hing said that Members belonging to the Hong Kong Federation of Trade Unions considered that the HKSAR Government should adopt a lenient approach on humanitarian grounds in handling the applications of the relevant persons for coming to Hong Kong. However, Mr LEUNG Kwok-hung's proposal would not achieve the purpose and would backfire. As such, they would not support the proposal.

87. Mr LEUNG Kwok-hung said that there was no need to impute motive to him for proposing the holding of an adjournment debate; the only concern of Members should be the impact of the debate. He pointed out that many pro-democracy figures had all along been refused entry into Hong Kong for various reasons. Their reason for applying to come to Hong Kong was clear this time, namely, to mourn for the death of Mr SZETO Wah who was respected by many persons including CE. The holding of the adjournment debate would let CE and the Central Government see for themselves the extent of concern on the matter. He clarified that his proposal was not purported to exert pressure on any authorities.

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88. The Chairman put to vote the proposal for moving a motion for adjournment under Rule 16(4) of RoP at the Council meeting on 12 January 2011, for the purpose of debating the HKSAR Government's handling on humanitarian grounds of matters relating to overseas pro-democracy figures' entry into Hong Kong for mourning the death of Mr SZETO Wah. Mr WONG Kwok-hing requested to claim a division.

The following Members voted in favour of the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Dr Joseph LEE, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr LEUNG Kwok-hung and Ms Tanya CHAN.  
(18 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP and Dr PAN Pey-chyou.  
(14 Members)

The following Member abstained:

Mr Paul TSE  
(1 Member)

89. The Chairman declared that 18 Members voted for and 14 Members voted against the proposal and 1 Member abstained. The proposal was supported.

90. There being no other business, the meeting ended at 3:52 pm.