

立法會  
*Legislative Council*

LC Paper No. CB(2) 1649/10-11

Ref : CB2/H/5/10

**House Committee of the Legislative Council**

**Minutes of the 20th meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 15 April 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 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, 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 Andrew LEUNG Kwan-yuen, GBS, 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 Paul CHAN Mo-po, MH, JP  
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  
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

**Members absent :**

Dr Hon David LI Kwok-po, GBM, GBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Dr Hon PAN Pey-chyou  
Hon Albert CHAN Wai-yip  
Hon WONG Yuk-man

**Clerk in attendance :**

Miss Odelia LEUNG                      Clerk to the House Committee

**Staff in attendance :**

Ms Pauline NG                              Secretary General  
Mr Arthur CHEUNG                         Acting 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 KAU Kin-wah	Senior Assistant Legal Adviser 3
Mr Stephen LAM	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
Miss Carrie WONG	Assistant Legal Adviser 4
Ms Wendy KAN	Assistant Legal Adviser 6
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Miss Josephine SO	Senior Council Secretary (2)7
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 19th meeting held on 8 April 2011**  
(*LC Paper No. CB(2) 1511/10-11*)

The minutes were confirmed.

**II. Matters arising**

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

Attendance of bureau officials at committee meetings

2. The Chairman said that she had relayed to CS again Members' views regarding the attendance of bureau officials at committee meetings. CS had responded that should committees consider it necessary for bureau officials to attend their meetings, the committee chairmen concerned could raise the request with the relevant bureaux. CS had also indicated that he would discuss the matter with politically appointed officials to see whether any enhancement could be made and to ensure that all policy bureaux would apply the same standard in the fielding of appropriate officials to meetings in response to the invitation of committees. Members noted CS's response.

### 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)**

(i) **Dutiable Commodities (Amendment) Bill 2011**  
*(LC Paper No. LS 49/10-11)*

3. The Chairman said that the Bill sought to amend the Dutiable Commodities Ordinance (Cap. 109) to increase the rates of duty on various types of tobacco to give effect to the proposal in the 2011-2012 Budget speech.

4. The Chairman further said that a subcommittee had been formed earlier to study the Public Revenue Protection (Dutiable Commodities) Order 2011, which concerned the same Budget proposal.

5. Mr WONG Sing-chi considered it necessary to form a Bills Committee to study the Bill in detail.

6. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mr Vincent FANG (as advised by Ms Miriam LAU) and Mr WONG Sing-chi.

7. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

(ii) **Motor Vehicles (First Registration Tax) (Amendment) Bill 2011**  
*(LC Paper No. LS 50/10-11)*

8. The Chairman said that the Bill sought to amend the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) to raise the first registration tax for private cars to give effect to the proposal in the 2011-2012 Budget speech.

9. The Chairman further said that a subcommittee had been formed earlier to study the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011, which concerned the same Budget proposal.

10. Mr KAM Nai-wai considered it necessary to form a Bills Committee to study the Bill in detail.

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11. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Ms Miriam LAU, Ms Audrey EU, Mr WONG Ting-kwong, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr IP Kwok-him and Miss Tanya CHAN.

12. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

**(b) Legal Service Division report on subsidiary legislation and non-legislative instrument gazetted on 8 April 2011 and tabled in Council on 13 April 2011**  

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*(LC Paper No. LS 48/10-11)*

13. The Chairman said that a total of three items of subsidiary legislation and a Revised Code of Practice on Employment ("the Revised Code") made under the Disability Discrimination Ordinance (Cap. 487) ("DDO") were gazetted on 8 April 2011 and tabled in the Council on 13 April 2011.

14. Regarding the Revised Code published by the Equal Opportunities Commission ("EOC"), the Chairman said that the existing Code of Practice on Employment ("the Code") made under DDO was published by EOC in January 1997. After more than a decade of operation, EOC had reviewed and revised the Code to ensure that it continued to serve as a useful reference tool. The Chairman added that the Revised Code was a non-legislative instrument but the scrutiny period of and amendment procedure for it were substantially the same as those for subsidiary legislation subject to the negative vetting procedure.

15. Ms Emily LAU considered it necessary to form a subcommittee to study the Revised Code.

16. The Chairman proposed that a subcommittee be formed to study the Revised Code in detail. Members agreed. The following Members agreed to join: Ms Emily LAU, Ms LI Fung-ying, Ms Cyd HO and Mr WONG Sing-chi.

17. Members did not raise any queries on the three items of subsidiary legislation.

18. The Chairman reminded Members that the deadline for amending the subsidiary legislation and the Revised Code was 11 May 2011.

#### **IV. Business for the Council meeting of 4 May 2011**

##### **(a) Questions**

19. The Chairman reminded Members that the cut-off date for registration of questions to be raised at the Council meeting was 12:00 midnight on Wednesday, 20 April 2011.

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

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

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

###### **(i) Mandatory Provident Fund Schemes (Amendment) Bill 2011**

21. The Chairman said that at the House Committee meeting on 11 March 2011, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

###### **(ii) Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010**

22. 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) Government motion**

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

##### **(e) Members' motions**

###### **(i) Motion to be moved by Hon CHEUNG Hok-ming**

###### **(ii) Motion to be moved by Hon Andrew LEUNG Kwan-yuen**

24. The Chairman said that Mr CHEUNG Hok-ming and Mr Andrew LEUNG had each been allocated a debate slot. The Secretariat would later inform Members of the subjects of the motions by circulars.

25. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 26 April 2011.

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

**(a) Report of the Subcommittee on Mutual Legal Assistance in Criminal Matters (India) Order**  
(LC Paper No. CB(2) 1514/10-11)

26. Dr Margaret NG, Chairman of the Subcommittee, reported that the Subcommittee had completed its scrutiny work. She referred Members to the Subcommittee's report for details of its deliberations.

27. Dr Margaret NG highlighted that the Subcommittee had made an article-by-article comparison of the provisions of the Order with those in the Model Agreement on Mutual Legal Assistance in Criminal Matters for the Hong Kong Special Administrative Region, and concluded that they were substantially the same. She added that the Subcommittee was in support of the Order. The Administration would give fresh notice for moving the motion on the Order.

**(b) Report of the Subcommittee on Public Revenue Protection (Dutiable Commodities) Order 2011**  
(LC Paper No. CB(1) 1883/10-11)

28. Dr Joseph LEE, Chairman of the Subcommittee, reported that the Subcommittee had held three meetings and had received views from members of the public on the Order. Major issues discussed by the Subcommittee included justifications for the proposed tobacco duty increase; impact on newspaper hawkers and illicit cigarette activities; and smoking cessation services. He referred Members to the Subcommittee's report for details of its deliberations.

29. Dr Joseph LEE further reported that some members objected to the Order. Mr Vincent FANG, Mr LEUNG Kwok-hung and Mr Albert CHAN had indicated that they might move a motion to repeal the Order at the Council meeting of 4 May 2011.

30. The Chairman reminded Members that as the deadline for amending the Order was 4 May 2011, the deadline for giving notice of amendments, if any, was Tuesday, 26 April 2011.

(c) **Report of the Subcommittee on Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011**

*(LC Paper No. CB(1) 1897/10-11)*

31. Mr WONG Ting-kwong, Chairman of the Subcommittee, reported that the Subcommittee had held three meetings and had received views from the relevant trade organizations and members of the public on the Order.

32. Mr WONG Ting-kwong elaborated that members had raised various queries about the justifications given by the Administration for the proposed increase in the first registration tax for private cars. They had also expressed concern about the impact of the proposed increase on environmental policy. Nevertheless, having regard to the serious operational problems and confusion to the trade which would be caused by the repeal of the Order, the Subcommittee considered it inappropriate to repeal the Order and recommended that the matter be followed up by the relevant Bills Committee. He referred Members to the Subcommittee's report for details of its deliberations.

33. Mr KAM Nai-wai said that he had given notice to move a motion to repeal the Order at the Council meeting of 4 May 2011 but noted that it was not included in the business for that Council meeting. He sought clarification of this.

34. The Chairman said that Mr KAM Nai-wai's proposed motion had yet to be approved by the President.

35. Mr CHAN Kam-lam sought clarification from the Acting Legal Adviser ("Acting LA") of the consequences of the repeal of the two public revenue protection Orders. He was concerned about the relevant tax arrangements and the impact on the scrutiny of the Dutiable Commodities (Amendment) Bill 2011 and the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011 should the Orders be repealed by the Legislative Council ("LegCo").

36. At the invitation of the Chairman, Acting LA said that should the Orders be repealed, their effect as temporary measures would cease. However, the repeal would not affect the scrutiny of the relevant Bills. If any amendments to reduce the duty or tax increases as proposed in the Bills were passed by LegCo, the excess duty or tax collected during the period when the Orders were in force would be refunded with reference to section 6 of the Public Revenue Protection Ordinance ("PRPO") (Cap. 120), and it would be up to the Administration to work out the relevant refund arrangements.



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37. Mr CHAN Kam-lam expressed concern about the consequences of the repeal of the Orders. He said that the objective of the two Orders was to protect public revenue by giving temporary effect to the proposed increases in tobacco duty and motor vehicles first registration tax as announced in the 2011-2012 Budget. Should the Orders be repealed, the new duty and tax rates would cease to be in force with immediate effect. However, if the relevant Bills became law subsequently, the new duty and tax rates would take effect again. He was concerned about the confusion caused to the relevant trades and cigarette and vehicle buyers as well as any possible gray areas in the duty and tax rates to be payable in the relevant period.

38. Acting LA responded that section 6 of PRPO had made clear provisions for the refund of any excess tax or duty paid under any order made under the Ordinance. The Administration had to work out the necessary administrative arrangements accordingly.

39. Mr LEUNG Kwok-hung pointed out that while arrangements could be made for the refund of any excess first registration tax collected to the registered car owners concerned, he queried how excess tobacco duty collected could be refunded to the cigarette buyers.

40. The Chairman recalled that a similar concern had been raised some years ago during LegCo's consideration of a Budget proposal to increase tobacco duties. According to her recollection, owing to practicable difficulties in tracing the cigarette buyers, the excess tobacco duties collected were not refunded. The arrangement was different from that of the first registration tax as records on car buyers were readily available. In view of Members' concerns, the Chairman requested the Legal Service Division ("LSD") to provide for Members' reference a paper setting out the issues arising from the repeal of the Orders.

41. Mr LEUNG Kwok-hung sought confirmation on whether LegCo had the power to repeal the Orders but could not determine the arrangements for the refund of any excess tax or duty collected.

42. Acting LA confirmed that LegCo had the power to repeal the Orders. It was for the Administration then to sort out the administrative arrangements for the refund of any excess tax or duty collected and any practical difficulties.

43. Mr Paul TSE agreed with the Chairman that the provision of a paper by LSD on the issues related to the repeal of the Orders would facilitate Members' consideration of the matter.

44. Concluding the discussions, the Chairman reiterated that according to her recollection, LegCo had handled a similar Budget proposal for an increase of tobacco duty. The proposal was passed with modification by LegCo but the excess duties collected were not refunded. She requested LSD to include in its paper information concerning the handling of that Budget proposal.

## **VI. Senior judicial appointments**

*(Director of Administration's letter dated 11 April 2011 to the Chairman of the House Committee issued to Members on 11 April 2011)*

45. The Chairman said that the Chief Executive had announced on 11 April 2011 his acceptance of the recommendations of the Judicial Officers Recommendation Commission to appoint:

- (a) the Right Honourable the Lord Collins of Mapesbury and the Right Honourable the Lord Clarke of Stone-cum-Ebony as non-permanent judges from other common law jurisdictions to the Court of Final Appeal; and
- (b) the Honourable Mr Justice Andrew CHEUNG Kui-nung as the Chief Judge of the High Court.

46. Dr Margaret NG said that a subcommittee would normally be formed to consider recommended senior judicial appointments.

47. The Chairman said that it was for the House Committee to decide whether to appoint a subcommittee to study the recommended senior judicial appointments. She pointed out that the House Committee had on one occasion considered it not necessary to form a subcommittee to study recommended appointments.

48. Dr Margaret NG considered it necessary to form a subcommittee to consider the recommended senior judicial appointments.

49. The Chairman proposed that a subcommittee be formed to consider the recommended judicial appointments in detail. Members agreed. The following Members agreed to join: Mr Albert HO, Dr Margaret NG, Ms Emily LAU, Mr Paul CHAN and Mr LEUNG Kwok-hung.

50. Ms Emily LAU said that she had received a submission from a member of the public, expressing views on the recommended senior judicial appointments. She requested the Secretariat to forward the submission to the subcommittee.

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

*(LC Paper No. CB(2) 1512/10-11)*

51. The Chairman said that there were 14 Bills Committees, 10 subcommittees under the House Committee (i.e. four subcommittees on subsidiary legislation/other instruments, two subcommittees on policy issues and four subcommittees on other Council business) and eight subcommittees under Panels in action.

## **VIII. Paper of the Committee on Rules of Procedure ("CRoP")**

### **Proposed amendments to Rules 44 and 45 of the Rules of Procedure**

*(LC Paper No. CROP 22/10-11)*

52. Mr TAM Yiu-chung, Chairman of CRoP, said that the paper invited Members' views on the proposed amendments to Rules 44 and 45 of the Rules of Procedure ("RoP") to extend the application of the two rules to all committees of the Council. He explained that under the current RoP, only the President or the chairman of any standing committee or select committee could exercise the power conferred under RoP 44 and 45. He referred Members to the paper for details of the proposed amendments, and added that subject to Members' views, he would move a motion in his capacity as Chairman of CRoP at the Council meeting of 11 May 2011 to amend RoP as proposed.

53. The Chairman invited Members' views on CRoP's proposal.

54. Mr LEE Cheuk-yan recalled that the discussion by CRoP had focused mainly on whether the application of RoP 45(2) regarding disorderly conduct should be extended to other committees. There had been little discussion on RoP 45(1) regarding the power of committee chairmen to order Members who persisted in irrelevance or tedious repetition to stop speaking. He pointed out that as it had been the practice of many committees to set a speaking time limit of five minutes for each member, he did not consider it necessary to extend the application of RoP 45(1) to other committees. He sought information on whether the proposed amendments to RoP 45(1) could be dealt with separately.

55. Dr Margaret NG said that during the discussion at the CRoP meeting, she had expressed objection to the proposed amendments for various reasons. She pointed out that in other common law jurisdictions such as the United Kingdom ("UK"), the powers of the Speaker of the

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Parliament to order immediate withdrawal of a Member and to name and suspend a Member were not extended to committee chairmen. She elaborated that in the UK Parliament, there were two types of committees, namely, committees (including committees of the whole House and standing committees) which proceeded by debate and broadly followed the procedures of the House of Commons, and committees (such as select committees which were similar to LegCo Panels) which proceeded by the taking of evidence, deliberation and the making of reports to the House on their findings. Only chairmen of the former type of committees had the power to order immediate withdrawal of a Member. She objected to the proposed amendments which sought to remove the distinction between these two types of committees. She also considered it inappropriate to extend the power to order withdrawal of a Member to chairmen of other committees having regard to the principle that authority should not be exercised on equals. Apart from matters of principles, she also envisaged that there would be practical difficulties for Panel chairmen in exercising the power to order the withdrawal of a Member. In her view, the proposed amendments could not achieve the purpose of stopping disorderly conduct on the part of Members, but would only lead to more conflict and confrontation among Members. Having regard to the above considerations, she objected to the proposed amendments to RoP.

56. Mr LEUNG Kwok-hung pointed out that, unlike the President, Panel chairmen were not neutral. He was concerned that the powers under RoP 44 and 45 might be used by Panel chairmen to order the withdrawal of a Member who had expressed views with which they disagreed. He considered it inappropriate to extend the powers under RoP 44 and 45 to all committees of the Council.

57. Mr Albert HO said that the proposal sought to extend the application of RoP 44 and 45 to other committees of the Council such that they were conferred with the same powers as those of the Finance Committee and select committees. He opined that the proposed extension of RoP 45(2) to other committees was narrow in scope as it sought to empower chairmen of other committees to order withdrawal of a Member from a meeting only on the ground of disorderly conduct, and such power would only be exercised as a last resort. From an institutional point of view, he saw no reason to object to the proposed amendments to RoP 45(2), having regard to the important roles and functions performed by other committees, such as discussing and receiving public views on issues of wide public concern. He concurred with Mr LEE Cheuk-yan that there had been little discussion by CRoP on RoP 45(1), and considered it not necessary to extend the rule to other committees.

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58. Mr Paul TSE sought clarification on whether procedure-wise the endorsement of the House Committee was required before the proposed amendments could be considered by the Council. Should this not be the case, he did not consider it necessary to discuss the merits of the proposed amendments at the House Committee meeting.

59. The Chairman said that the purpose of the CRoP's paper was to seek Members' views on the proposed amendments to RoP 44 and 45.

60. Mr IP Kwok-him said that Members could express their views at the debate on the proposed amendments at the Council meeting.

61. Mr TAM Yiu-chung said that the issue of whether RoP 44 and 45 should be extended to other committees of the Council had been explored by CRoP in 1999 and 2004. Following recent developments, CRoP discussed the issue again at its meeting on 29 March 2011. In deciding to recommend the extension of RoP 44 and 45 to other committees, CRoP had taken into account the diverse views expressed by members including those of Dr Margaret NG. He added that Members could express their views on the merits of the proposed amendments and vote on them at the Council meeting of 11 May 2011.

62. Concluding the discussions, the Chairman said that the views expressed by Members would be taken into account in the consideration of the moving of the motion to amend RoP as proposed.

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