

立法會
Legislative Council

LC Paper No. CB(2) 2148/10-11

Ref : CB2/H/5/10

House Committee of the Legislative Council

**Minutes of the 27th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 17 June 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 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 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
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 Mrs Regina IP LAU Suk-yea, 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 Vincent FANG Kang, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Clerk in attendance :

Miss Odelia LEUNG 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
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Miss Erin TSANG	Acting Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
Mr Bonny LOO	Assistant Legal Adviser 3
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Josephine SO	Senior Council Secretary (2)7
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of verbatim transcript/minutes of meetings

- (a) **Verbatim transcript of the special meeting held on 20 May 2011**
(LC Paper No. CB(2) 2065/10-11)
- (b) **Minutes of the 26th meeting held on 10 June 2011**
(LC Paper No. CB(2) 2066/10-11)

The two sets of verbatim transcript and minutes were confirmed.

II. Matters arising

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

2. The Chairman said that there was nothing special to report.

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) **Guardianship of Minors (Amendment) Bill 2011**
(LC Paper No. LS 79/10-11)

Action

3. The Chairman said that the Bill sought to amend the Guardianship of Minors Ordinance (Cap. 13) to implement the recommendations in the Report on Guardianship of Children published by the Law Reform Commission of Hong Kong ("LRC") in January 2002. The Panel on Welfare Services had been briefed on the Administration's response to the LRC Report and the legislative proposals on 8 February 2010 and 14 March 2011 respectively. Panel members were supportive of the proposals and had expressed concerns about the details and implementation of the proposals.

4. Mr Ronny TONG sought the views of the Legal Adviser ("LA") on the need to form a Bills Committee to study the Bill.

5. At the invitation of the Chairman, LA said that the LRC Report had identified various enforcement issues relating to the appointment, removal of appointment and powers of guardians in the existing legislation. The Bill sought to simplify and enhance the existing procedures. Apart from the Social Welfare Department, non-governmental organizations would also be involved in the implementation of the proposed legislative changes. Members might wish to consider setting up a Bills Committee to study the Bill in detail.

6. Mr James TO considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Dr Margaret NG, Ms Audrey EU and Mr WONG Sing-chi (as advised by Mr James TO).

(ii) Supplementary Appropriation (2010-2011) Bill
(*LC Paper No. LS 78/10-11*)

7. The Chairman said that the Bill sought to provide for the appropriation of \$9,638,365,995.02 for the services of the Government in the financial year that ended on 31 March 2011 in addition to the sum appropriated by the Appropriation Ordinance 2010.

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

(iii) Copyright (Amendment) Bill 2011
(*LC Paper No. LS 80/10-11*)

9. The Chairman said that the Bill sought, inter alia, to provide for the rights of a copyright owner in a work, and the rights of a performer in a performance, relating to the communication of the work or performance to the public; and to provide for limitations on the liability of online service providers relating to online materials.

Action

10. The Chairman further said that the Panel on Commerce and Industry had been briefed on the legislative proposals on 15 April 2008 and 17 November 2009. Members had expressed various views and concerns at the meetings. The Panel had also received views of deputations at its meeting on 19 January 2010. The Panel supported in principle the legislative proposals but urged the Administration to endeavour to strike a reasonable balance between the interests of the copyright owners and the users.

11. Mr Ronny TONG considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Ms Audrey EU, Mr Ronny TONG and Ms Cyd HO.

(b) **Legal Service Division report on subsidiary legislation gazetted on 10 June 2011 and tabled in Council on 15 June 2011**
(*LC Paper No. LS 76/10-11*)

12. The Chairman said that only one item of subsidiary legislation, i.e. the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) Notice 2011, was gazetted on 10 June 2011 and tabled in the Council on 15 June 2011.

13. Members did not raise any queries on the Notice.

14. The Chairman reminded Members that the deadline for amending the Notice was 13 July 2011.

IV. Further business for the Council meeting of 22 June 2011

(a) **Tabling of papers**

Report No. 26/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments
(*LC Paper No. CB(2) 2068/10-11 issued vide LC Paper No. CB(3) 903/10-11 dated 16 June 2011*)

15. The Chairman said that the report covered 10 items of subsidiary legislation, the period for amendment of which would expire on 22 June 2011. No Member had indicated intention to speak on the subsidiary legislation.

16. Members noted the report.

(b) **Questions**
(LC Paper No. CB(3) 894/10-11)

17. The Chairman said that Mr Andrew LEUNG, Mr LAU Kong-wah, Mr Albert HO and Ms Starry LEE had replaced their oral questions.

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

(i) **Legislation Publication Bill**

(ii) **Stamp Duty (Amendment) (No. 2) Bill 2010**

18. The Chairman said that the relevant Bills Committees on the above two Bills had reported to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debates on the Bills.

V. Business for the Council meeting of 29 June 2011

(a) **Questions**
(LC Paper No. CB(3) 893/10-11)

19. 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**

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

(c) **Government motions**

Two proposed resolutions to be moved by the Secretary for Financial Services and the Treasury ("SFST") under the Mandatory Provident Fund Schemes Ordinance relating to:

(i) **the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011; and**

(ii) **the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011**

(Wording of the proposed resolutions issued vide LC Paper No. CB(3) 913/10-11 dated 17 June 2011.)

Action

21. The Chairman said that the proposed resolutions were for seeking the Council's approval to adjust the Minimum Relevant Income Level ("Min RI") and the Maximum Relevant Income Level ("Max RI") for contribution purpose under the Mandatory Provident Fund Schemes Ordinance ("the Ordinance") set out respectively in Schedule 2 and Schedule 3 to the Ordinance. She drew Members' attention to the letter dated 17 June 2011 from the Acting SFST requesting the House Committee not to request the Administration to withdraw its notice for moving the proposed resolution on Min RI at the Council meeting of 29 June should Members decide to form a subcommittee to study it. According to the Administration, the moving of the proposed resolution at the Council meeting of 29 June would enable the implementation of the revised Min RI of HK\$6,500 on 1 November 2011.

22. In response to Dr Margaret NG's enquiry on whether the Administration had met the notice requirement for moving the two proposed resolutions, the Chairman said that SFST had requested that his letter dated 14 June be deemed as the notices for moving the proposed resolutions at the Council meeting of 29 June.

23. At the invitation of the Chairman, Secretary General said that SFST originally intended to seek the President's permission for dispensing with the requisite notice requirement for moving the two proposed resolutions at the Council meeting of 22 June. On the advice of the President, she had consulted Members on SFST's request. Having regard to Members' view that sufficient notice should be given for the moving of the two proposed resolutions, SFST had subsequently withdrawn his request and requested instead that his letter of 14 June be deemed as the notices for moving the proposed resolutions at the Council meeting of 29 June in which case the waiving of the requisite notice period by the President was not required.

24. Mr Tommy CHEUNG sought clarification on the rationale for the Administration's request for departing from the established practice of withdrawing its notice for moving the proposed resolution on Min RI, should the House Committee decide to form a subcommittee to study it. As far as he could recall, such a request was rare.

25. The Chairman said that according to SFST's explanation, the Administration hoped to expedite the processing of the proposed resolution for the early implementation of the increased level of Min RI to benefit more employees. SFST requested that should Members decide to form a subcommittee to study the proposed resolution on Min RI, the Administration not be requested to withdraw its notice for moving the proposed resolution at the Council meeting of 29 June pending the

Action

scrutiny of the subcommittee. Notwithstanding SFST's request, should the subcommittee consider that more time was needed for scrutiny, the Administration could still be requested to withdraw its notice before the Council meeting of 29 June.

26. The Chairman further said that there were precedents where Members had not requested the Administration to withdraw its notice for moving a proposed resolution subject to positive vetting even though a subcommittee had been formed to study it. A case in point was the proposed resolution moved under the Public Finance Ordinance (Cap. 2) for seeking funds on account considered by the House Committee on 22 February 2008. She added that according to the Administration, if it was requested to withdraw its notice for moving the proposed resolution at the Council meeting of 29 June and to give fresh notice for moving the proposed resolution at a Council meeting in July 2011 or later after the relevant subcommittee had completed its scrutiny work, the new Min RI could not be implemented on 1 November 2011.

27. Mr Tommy CHEUNG said that the proposed increase in Min RI would not affect employers. However, as there were different views in the community on the appropriate level of Min RI, he considered it necessary to form subcommittees to study the two proposed resolutions on Min RI and Max RI.

28. Mr Ronny TONG said that the legislative proposals had been discussed by the relevant Panel on a number of occasions. Only the proposed increase in Max RI would have financial implications on employers, and the proposed increase in Min RI would not. He stressed that employees would not be able to benefit from the implementation of the statutory minimum wage if the new Min RI was not implemented expeditiously. He objected to the setting up of a subcommittee to study the proposed resolution on Min RI.

29. Mr CHAN Kam-lam indicated objection to the setting up of a subcommittee to study the proposed resolution on Min RI.

30. Mr LEE Cheuk-yan also expressed objection to the setting up of a subcommittee to study the Min RI as it might delay its implementation. He pointed out that the subcommittee, if formed, would not have much time for discussions if the proposed resolution was to be moved at the Council meeting of 29 June.

31. Mr WONG Kwok-kin said that when the relevant Panel received views from deputations on the Administration's proposals, the deputations had expressed support for increasing the Min RI to \$6,500 and there was

Action

no controversy over it. As the proposed increase in Min RI would not add financial burden on employers, he could not see why employers had to impede its implementation.

32. Mr IP Kwok-him declared that he was a non-executive director of the Management Board of the Mandatory Provident Fund Schemes Authority. He said that there was no controversy over the proposed increase in Min RI. Having regard to the adverse impact of the delayed implementation of the new Min RI on low-income employees, he appealed to Mr Tommy CHEUNG to reconsider his proposal for setting up a subcommittee to study the proposed resolution on the Min RI.

33. Ms LI Fung-ying suggested that Mr Tommy CHEUNG's proposals for forming subcommittees to study the Min RI and the Max RI be put to vote.

34. Mr Tommy CHEUNG clarified that he had no intention of impeding the implementation of the revised Min RI as it would not affect employers. He proposed the formation of subcommittees to study the two proposed resolutions in detail as he considered it important for Members not to scrutinize legislation in haste. He stressed that it was incumbent upon the Administration to submit legislative proposals as early as practicable and allow Members sufficient time for scrutiny.

35. Mr Andrew LEUNG said that he supported early implementation of the proposed adjustment to Min RI. However, he considered it necessary to respect Members' wish to form a subcommittee or Bills Committee to study legislative proposals. As a Member had indicated the need to form a subcommittee to study the proposed resolution on Min RI, he considered that a subcommittee should be formed but the subcommittee should expedite its scrutiny to facilitate the moving of the proposed resolution at the Council meeting of 29 June.

36. Mr IP Wai-ming said that there was consensus on increasing the Min RI to \$6,500 and its implementation should not be delayed. He suggested that Mr Tommy CHEUNG's proposals for forming subcommittees on the two respective proposed resolutions be put to vote separately.

37. Mr Paul TSE said that he was supportive of early implementation of the proposed increase in Min RI. Nevertheless, he shared Mr Andrew LEUNG's view that, as a matter of principle, Members' wish to form a subcommittee to study the proposed resolution should be respected.

Action

38. While supporting the early implementation of the new Min RI, Mr Albert HO agreed on the need to follow the established practice of respecting Members' wish to form subcommittees or Bills Committees to study legislative proposals. He requested that the subcommittee, if formed, should complete its scrutiny work as early as practicable to enable Members' consideration of the proposed resolution at the Council meeting of 29 June.

39. Dr Priscilla LEUNG shared the view that Members' wish to form a subcommittee to study an item of subsidiary legislation should be respected.

40. Mr IP Kwok-him said that should Mr Tommy CHEUNG remain of the view that it was necessary to form a subcommittee to study the proposed resolution on Min RI, he would not object to it. However, the subcommittee should expedite its scrutiny work so that the proposed resolution could be considered at the Council meeting of 29 June without any delay in implementing the revised Min RI.

41. Mr Ronny TONG appealed to Mr Tommy CHEUNG to withdraw his proposal of forming a subcommittee on the proposed resolution on Min RI to facilitate its early implementation.

42. Mr Tommy CHEUNG said that he had stated earlier the reasons for his proposal for setting up a subcommittee on Min RI. While he agreed that the subcommittee should complete its scrutiny as soon as practicable to enable the moving of the proposed resolution at the Council meeting of 29 June, he still considered it necessary to form a subcommittee.

43. As Mr WONG Kwok-kin objected to Mr Tommy CHEUNG's proposal of forming a subcommittee to study the proposed resolution on Min RI, the Chairman put the proposal to vote. The result was: 12 Members voted for and six Members voted against the proposal. The Chairman declared that the proposal was supported. The following Members agreed to join the subcommittee: Mr LEE Cheuk-yan, Mr Tommy CHEUNG, Mr IP Wai-ming and Mr IP Kwok-him.

44. Members agreed not to request the Administration to withdraw its notice for moving the proposed resolution on Min RI at the Council meeting of 29 June 2011.

Action

45. The Chairman then invited Members' view on Mr Tommy CHEUNG's proposal of forming a subcommittee to study the proposed resolution on Max RI. No Member indicated objection to the proposal. The following Members agreed to join the subcommittee: Ms Miriam LAU, Mr LEE Cheuk-yan, Mr Tommy CHEUNG, Mr WONG Sing-chi (as advised by Mr Fred LI) and Mr IP Kwok-him.

46. The Chairman said that in line with the established practice, the Administration would be requested to withdraw its notice for moving the proposed resolution on Max RI at the Council meeting of 29 June 2011.

(d) Members' motions

(i) Motion on "The 20th anniversary of implementing the Hong Kong Bill of Rights Ordinance"

(Wording of the motion issued vide LC Paper No. CB(3) 908/10-11 dated 16 June 2011.)

(ii) Motion on "Proposal on the constitutional reform in Hong Kong"

(Wording of the motion issued vide LC Paper No. CB(3) 909/10-11 dated 16 June 2011.)

47. The Chairman said that the above motions would be moved by Ms Emily LAU and Mr LEUNG Kwok-hung respectively and the wording of the motions had been issued to Members.

48. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 22 June 2011.

Report on study of subsidiary legislation

49. The Chairman invited Members to note the list of subsidiary legislation tabled at the meeting, the scrutiny period of which would expire on 29 June 2011. The list contained one item of subsidiary legislation. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 21 June 2011.

VI. Report of Bills Committees and subcommittees

(a) Report of the Bills Committee on Buildings (Amendment) Bill 2010

(LC Paper No. CB(1) 2468/10-11)

Action

50. Mr IP Kwok-him, Chairman of the Bills Committee, reported that the Bills Committee had held 22 meetings and had received views from stakeholders including relevant trade associations and professional bodies. The Bills Committee in general supported the policy intent of the Bill to empower the Building Authority to require owners to carry out periodic inspections and repairs of their buildings through the introduction of a mandatory building inspection scheme ("MBIS") and a mandatory window inspection scheme ("MWIS") to ensure a better and safer building environment.

51. Mr IP Kwok-him highlighted the major issues discussed by the Bills Committee. These included the supply of as well as qualifications and experience requirements for Registered Inspectors ("RIs") and Qualified Persons ("QPs"); assistance to owners' corporations and owners; legal liabilities of owners/owners' corporations/property managers/professionals and related penalties; and handling of unauthorized building works and internal alteration works. Members had also discussed at length the issue of unauthorized subdivision of flats.

52. Mr IP Kwok-him further reported that the Administration had taken on board members' views and would move relevant Committee Stage amendments ("CSAs") to the Bill. Mr KAM Nai-wai had indicated that he might move a CSA to provide that an RI/QP must comply with the practice note on the best practices on tendering procedures for engagement of RIs/QPs and Registered Contractors.

53. Mr IP Kwok-him added that the Administration had proposed to move a series of CSAs to the Bill to include a number of new building safety initiatives to further strengthen the existing statutory building safety control regime. Given the diverse views among members and the view of the legal adviser to the Bills Committee that it was difficult to see how the proposed amendments related to MBIS and MWIS, the Administration had decided not to propose the relevant CSAs in the current legislative exercise. The Administration had indicated that it would take forward the relevant CSAs through a separate bill as soon as possible. He added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 29 June 2011.

54. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 20 June 2011.

(b) **Report of the Bills Committee on Communications Authority Bill**

(LC Paper No. CB(1) 2462/10-11)

55. Mr LAU Kong-wah, Chairman of the Bills Committee, reported that the Bills Committee had held 11 meetings and had exchanged views with the Broadcasting Authority ("BA") at two meetings on the establishment of the Communications Authority ("CA"), the provisions in the Bill and related matters. It had also received views from stakeholders, including the broadcasting and telecommunications industries as well as trade associations. He referred Members to the Bills Committee's report for details of its deliberations.

56. Mr LAU Kong-wah elaborated that the Bills Committee in general supported the legislative intent of the Bill to establish CA as a single unified regulator to take over the existing functions of BA and the Telecommunications Authority in regulating the broadcasting and telecommunications sectors. In the course of scrutiny, members had raised particular concern about the establishment, functions, composition and meetings of CA as well as disclosure of interests. The Administration had actively responded to and had accepted the views of members, and would move relevant CSAs to the Bill. Dr Margaret NG had indicated that she would move CSAs to include references in the Bill to signify the independent status of CA. Mr LAU added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 29 June 2011.

57. In response to Dr Margaret NG, Mr LAU Kong-wah said that the Bills Committee had taken note of the CSAs proposed by Dr NG.

58. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 20 June 2011.

(c) **Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill**

(LC Paper No. CB(1) 2471/10-11)

59. Mr CHAN Kam-lam, Chairman of the Bills Committee, reported that the object of the Bill was to provide a legislative framework to implement the requirements of the Financial Action Task Force ("FATF") to –

- (a) impose customer due diligence requirements and record-keeping requirements on specified financial institutions;

Action

- (b) regulate the operation of money changing and remittance service and licensing of money service operators; and
- (c) establish the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal ("Tribunal").

60. Mr CHAN Kam-lam further reported that the Bills Committee had held 15 meetings and had invited the public including relevant trades and professional organizations to give views on the Bill. The major issues deliberated by the Bills Committee included the application of the provisions to the Government; customer due-diligence and record-keeping requirements; the definition of politically exposed persons; supervisory and investigatory powers of the relevant authorities; regulation of operation of money service; the scope and penalties relating to criminal offences provided in the Bill; and appointment and procedural matters of the Tribunal.

61. Mr CHAN Kam-lam said that members were particularly concerned whether the proposals in the Bill contained adequate measures and appropriate mechanisms to safeguard the rights of financial institutions under regulation, their staff members as well as the general public. In response to the views and concerns of members, the Administration would move various CSAs to the Bill. He added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 29 June 2011.

62. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 20 June 2011.

(d) Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011

63. Mr TAM Yiu-chung, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. He said that the Bills Committee had held six meetings and had completed its scrutiny work. The Bills Committee had received views from members of the public on the Bill.

64. Mr TAM Yiu-chung elaborated that regarding the election petition mechanism, some members were of the view that it was not appropriate to extend the leap-frog appeal mechanism applicable to the Chief Executive election to the elections of the Legislative Council ("LegCo"), District Council and Village Representatives. Members pointed out that the proposal was not in compliance with the principles for the handling of

Action

appeals by the Court of Final Appeal. Since election petitions had to be disposed of expeditiously, the proposal would also affect other appeal cases.

65. Mr TAM Yiu-chung further reported that in response to members' views, the Administration would move CSAs to extend the filing period for an appeal against the determination of a petition by the Court of First Instance from seven to 14 working days; and to implement a de minimis arrangement for handling election returns with minor errors or omissions. The Administration would also move CSAs to provide greater flexibility to candidates in sending promotional letters to electors free of postage. The Bills Committee supported the proposed CSAs, and noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 6 July 2011.

66. Mr TAM Yiu-chung added that the Bills Committee would provide its written report the following week.

67. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Saturday, 25 June 2011.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 2067/10-11)

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

VIII. Proposal from Hon Albert HO Chun-yan for moving a motion for adjournment under Rule 16(4) at the Council meeting of 22 June 2011 for the purpose of debating the following issue: the decision by the Court of Final Appeal to request an interpretation of the Basic Law by the Standing Committee of the National People's Congress regarding the controversy of sovereignty immunity raised in the debt litigation of the Democratic Republic of the Congo

(Letter dated 14 June 2011 from Hon Albert HO Chun-yan to the Chairman of the House Committee (LC Paper No. CB(2) 2076/10-11(01))

69. At the invitation of the Chairman, Mr Albert HO said that the Court of Final Appeal ("CFA") had, for the first time, sought an interpretation under Article 158(3) of the Basic Law ("BL") from the Standing

Action

Committee of the National People's Congress ("SCNPC") in respect of a case involving the Democratic Republic of the Congo. Given the far reaching implications on Hong Kong of the invocation of the mechanism under BL 158 by CFA and the wide public concern and discussions, he considered it necessary to have a forum for Members to express their views on the matter. As the final judgment on the case had yet to be delivered, he considered it inappropriate to discuss the matter by way of a Members' motion with no legislative effect as such a motion might not be neutrally-worded and would be put to vote, hence his proposal for holding an adjournment debate to enable Members to express their views on the matter. He stressed that the holding of an adjournment debate would not prejudice the pending court case as the debate would be on matters of principles. He added that as the debate would be put on record, the Hong Kong Special Administrative Region ("HKSAR") Basic Law Committee and SCNPC could make reference to the discussions in making their recommendation/decision on the matter.

70. The Chairman invited Members' views on Mr Albert HO's proposal.

71. In response to Dr Margaret NG, the Chairman said that public officers would attend an adjournment debate held under Rule 16(4) of the Rules of Procedure ("RoP") to give a reply.

72. Dr Margaret NG said that she originally had reservations about debating the matter in any form in LegCo given that the subject of the debate concerned a CFA case the judgment on which was pending SCNPC's interpretation on the question of state immunity. However, as it was the first time CFA had invoked the mechanism under BL 158(3) to make a reference to SCNPC for an interpretation of BL, she considered it necessary for the Administration to explain the matter to the public. She elaborated that the Secretary for Justice ("SJ") had asked for the Court's decision on whether to seek an interpretation from SCNPC and had placed before the Court three letters from the Commissioner's Office of the Foreign Ministry in the HKSAR. This had raised doubt as to whether SJ had interfered with judicial independence. She had raised with SJ the suggestion of inviting the Department of Justice to explain the matter to the Panel on Administration of Justice and Legal Services. SJ, however, considered it inappropriate to do so. Should the holding of an adjournment debate be the only means for Members to discuss the matter, she would support the proposal.

73. Ms Audrey EU expressed support for Mr Albert HO's proposal. She did not consider that the holding of an adjournment debate on the matter would affect CFA's decision as CFA had already decided to seek

Action

an interpretation from SCNPC. She noted that the Hong Kong Bar Association had recently met with Mr QIAO Xiao-yang in Beijing and had exchanged views with him on the procedure to be followed by the Court in making a reference to SCNPC for an interpretation of BL. Mr QIAO had mentioned about the need to enhance the transparency of the procedure. She pointed out that many academics such as Mr LING Bing had also given views on the procedure. CFA had ruled that the certificate requirement under BL 19(3) did not apply to the present case. She stressed that the procedure to be followed by the Court in making a reference to SCNPC was a matter of great importance and worthy of discussion by LegCo.

74. Mr WONG Ting-kwong said that judicial independence was an important cornerstone of Hong Kong and LegCo must not interfere with judicial independence. As CFA had already decided by a majority vote to make a reference to SCNPC for an interpretation of BL, he did not consider it appropriate for LegCo to hold an adjournment debate on the matter. He added that individual Members could conduct seminars and the like to explain the matter to members of the public should they consider it necessary to do so.

75. Mr Jeffrey LAM shared the view that it was of fundamental importance to respect the independence of the Judiciary. As the case was pending judgment, it was not appropriate for LegCo to hold an adjournment debate on the matter.

76. Dr Priscilla LEUNG said that given the sensitivity of the issue, there were bound to be divergent views on the CFA's decision to seek an interpretation of BL from SCNPC. As CFA had decided by a majority vote to make such a reference, its decision should be respected. She had all along held the view that LegCo was not an appropriate platform for debating any court case. There were various channels for Members to express their views on the matter and she did not consider it appropriate to discuss it in LegCo.

77. Ir Dr Raymond HO said that it was the first time CFA sought an interpretation of BL from SCNPC. He stressed that judicial independence was a fundamental principle in Hong Kong. In line with the principle of separation of powers, the Legislature and the Judiciary operated independently, albeit LegCo had the power to endorse the appointment and removal of the judges of CFA and the Chief Judge of the High Court pursuant to BL 73(7). He pointed out that during the discussions on the Environmental Impact Assessment ("EIA") Reports for the Hong Kong-Zhuhai-Macao Bridge project, Members had highlighted the need to refrain from discussing matters relating to the court case.

Action

Given that CFA had already made a reference to SCNPC for an interpretation of the relevant provisions of BL, he considered it not appropriate for LegCo to hold an adjournment debate on the matter. He did not support Mr Albert HO's proposal.

78. Mr Paul TSE said that unlike the previous three occasions, it was the first time CFA had taken the initiative to request an interpretation by SCNPC. LegCo should not debate on the appropriateness of such a legal procedure initiated by the Court. It had all along been the convention that LegCo, as part of the constitutional structure, should not discuss court cases which were not yet concluded. He shared the view that it was not the appropriate time for LegCo to hold an adjournment debate on the matter.

79. Dr Margaret NG said that respect for judicial independence did not mean that LegCo should refrain entirely from discussing any judicial matters. In considering senior judicial appointments, Members had all along adopted a cautious approach to ensure adherence to the principle of judicial independence. She further said that it was clearly provided in BL 73(6) that LegCo should debate any issue concerning public interests. The purpose of the proposed adjournment debate was not to discuss the merits of the CFA's decision. Rather, the focus should be on the procedures involved in seeking an interpretation from SCNPC and the reasons for the CFA's decision. In her view, these were important constitutional issues which should be discussed by LegCo. She added that Members should be able to exercise their own judgment on what should and should not be discussed during the debate to ensure that the principle of judicial independence was not undermined.

80. Ms Audrey EU said that she had cited the recent meeting between Mr QIAO Xiaoyang and the Hong Kong Bar Association to highlight the wide public concern about the procedure to be followed by the Court in making a reference to SCNPC for an interpretation of BL. This issue, which did not have any impact on judicial independence, should be discussed by LegCo.

81. Ir Dr Raymond HO said that Members should not adopt double standards in considering proposals for discussing the EIA Reports on Hong Kong-Zhuhai-Macao Bridge project and the CFA's decision on an interpretation of BL, both of which involved pending court cases.

82. Mr Paul TSE reiterated his view that it was not the opportune time to hold an adjournment debate on the matter.

Action

83. Mr Albert HO said that the purpose of his proposal for holding an adjournment debate was not to discuss the details of the Congo case. He believed that where necessary, the President would rule on the content of speeches made by individual Members during the adjournment debate.

84. The Chairman put to vote Mr Albert HO's proposal for moving a motion for adjournment under RoP 16(4) at the Council meeting of 22 June 2011 for the purpose of debating the following issue: the decision by CFA to request an interpretation of BL by SCNPC regarding the controversy of sovereignty immunity raised in the debt litigation of the Democratic Republic of the Congo. Ms Emily LAU 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, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man.

(23 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Dr David LI, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM.

(32 Members)

The following Member abstained:

Dr LEUNG Ka-lau

(1 Member)

Action

85. The Chairman declared that 23 Members voted for and 32 Members voted against the proposal and one Member abstained. Mr Albert HO's proposal was not supported.

IX. Letter from the Secretary for Financial Services and the Treasury on the moving of two proposed resolutions under the Mandatory Provident Fund Schemes Ordinance at the Council meeting of 22 June 2011

(Letters dated 14 June 2011 from the Secretary for Financial Services and the Treasury ("SFST") to the President and the Chairman of the House Committee respectively (LC Paper Nos. CB(2) 2076/10-11(02) and (03); letter dated 15 June 2011 from SFST to the President (LC Paper No. CB(2) 2112/10-11(01));

letter dated 16 June 2011 from Acting SFST to the President (LC Paper No. CB(2) 2125/10-11(01));

letter dated 17 June 2011 from Acting SFST to the Chairman of the House Committee (LC Paper No. CB(2) 2131/10-11(01); and LC Paper No. LS 81/10-11)

(Discussions on this item had been covered under agenda item V(c) above.)

86. There being no other business, the meeting ended at 3:34 pm.