

立法會
Legislative Council

LC Paper No. CB(2) 2300/10-11

Ref : CB2/H/5/10

House Committee of the Legislative Council

**Minutes of the 28th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 24 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 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
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 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 Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, 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
Mr Stephen LAM	Principal Council Secretary (Complaints)
Mr Kelvin LI	Acting Chief Public Information Officer
Ms Amy YU	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
Miss Carrie WONG	Assistant Legal Adviser 4
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 the minutes of the 27th meeting held on 17 June 2011
(LC Paper No. CB(2) 2148/10-11)

The 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

Legal Service Division report on subsidiary legislation gazetted on 17 June 2011 and tabled in Council on 22 June 2011

(LC Paper No. LS 83/10-11)

3. The Chairman said that two items of subsidiary legislation were gazetted on 17 June 2011 and tabled in the Council on 22 June 2011.

Action

4. Members did not raise any queries on the subsidiary legislation.
5. The Chairman reminded Members that the deadline for amending the subsidiary legislation was the second meeting of the Legislative Council ("LegCo") in the next session.

IV. Further business for the Council meeting of 29 June 2011

(a) **Tabling of papers**

Report No. 27/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 2147/10-11 issued vide LC Paper No. CB(3) 946/10-11 dated 23 June 2011)

6. The Chairman said that the report covered one item of subsidiary legislation, the period for amendment of which would expire on 29 June 2011. No Member had indicated intention to speak on the subsidiary legislation.

7. Members noted the report.

(b) **Questions**

(LC Paper No. CB(3) 933/10-11)

8. The Chairman informed Members that Dr Samson TAM had given up his oral question slot which had been allocated to Mr WONG Kwok-kin. As Mr LEE Wing-tat's oral question to be raised at the Council meeting had been answered by the Administration in response to two urgent questions on the same subject matter raised at the Council meeting of 22 June 2011, the President had ruled Mr LEE's question out of order under Rule 25(2) of the Rules of Procedure ("RoP"). As such, only five oral questions would be asked at the Council meeting.

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

Securities and Futures (Amendment) Bill 2011

9. The Chairman said that the Administration had given notice to present the above Bill to the Council on 29 June 2011. The House Committee would consider the Bill at its next meeting on 8 July 2011.

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

(i) **Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill**

(ii) **Buildings (Amendment) Bill 2010**

(iii) **Communications Authority Bill**

10. The Chairman said that the relevant Bills Committees on the above three 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 these Bills.

V. Business for the Council meeting of 6 July 2011

(a) **Questions**

(LC Paper No. CB(3) 932/10-11)

11. 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**

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

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

(i) **Electoral Legislation (Miscellaneous Amendments) Bill 2011**

13. The Chairman said that at the last House Committee meeting, Mr TAM Yiu-chung, Chairman of the relevant Bills Committee, had made a verbal report and Members did not raise objection to the resumption of the Second Reading debate on the Bill. The written report of the Bills Committee would be provided under agenda item VII(a).

(ii) Supplementary Appropriation (2010-2011) Bill

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

(d) 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) Regulation 2011; and

(ii) the Poisons List (Amendment) Regulation 2011

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 906/10-11 dated 16 June 2011.)

(LC Paper No. LS 82/10-11)

15. The Chairman said that the proposed resolution was for seeking LegCo's approval of the Pharmacy and Poisons (Amendment) Regulation 2011 and the Poisons List (Amendment) Regulation 2011 to add eight substances to Division A of the First and Third Schedules to the Pharmacy and Poisons Regulations and Division A of Part I of the Poisons List as contained in the Schedule to the Poisons List Regulations, so that the sale, supply, labelling and storage of pharmaceutical products containing these substances were subject to certain restrictions.

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

(e) Members' motions

(i) Motion on "Immediately announcing the resumption of the construction of Home Ownership Scheme flats"

(Wording of the motion issued vide LC Paper No. CB(3) 940/10-11 dated 23 June 2011.)

(ii) Motion on "Studying the establishment of an innovation and technology bureau"

(Wording of the motion issued vide LC Paper No. CB(3) 941/10-11 dated 23 June 2011.)

17. The Chairman said that the above motions would be moved by Mr Alan LEONG and Dr Samson TAM respectively and the wording of the motions had been issued to Members.

18. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 28 June 2011.

Report on study of subsidiary legislation

19. The Chairman invited Members to note the list of subsidiary legislation tabled at the meeting, the scrutiny period of which would expire on 6 July 2011. The list contained 17 items of subsidiary legislation. Members who wished to speak on the subsidiary legislation should indicate their intention by 12:00 midnight on Monday, 27 June 2011.

VI. Advance information on business for the Council meeting of 13 July 2011

Bills - First Reading and moving of Second Reading

Road Traffic (Amendment) (No. 2) Bill 2011

20. The Chairman said that the Administration had given notice to present the above Bill to the Council on 13 July 2011. The House Committee would consider the Bill at its first meeting after the summer recess.

VII. Report of Bills Committees and subcommittees

(a) Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011
(LC Paper No. CB(2) 2161/10-11)

21. The Chairman said that Mr TAM Yiu-chung, Chairman of the Bills Committee, had made a verbal report at the last House Committee meeting. She invited Members to note the written report of the Bills Committee.

22. Members did not raise any queries on the report.

(b) **Report of the Bills Committee on University of Hong Kong (Amendment) Bill 2010**
(LC Paper No. CB(2) 2163/10-11)

23. Ms Cyd HO, Chairman of the Bills Committee, reported that the Bills Committee had held five meetings and had met with representatives of the University of Hong Kong ("HKU"), relevant staff associations and the student union.

24. Ms Cyd HO elaborated that the objects of the Bill were to remove the inconsistency between the University of Hong Kong Ordinance and the Statutes with regard to the roles and powers of the Court and the Council of HKU and to replace the old academic titles with the new academic titles. Dr David LI would propose a Committee Stage amendment ("CSA") to provide assurance to staff members of HKU holding the old academic titles that their existing rights and protection would not be affected.

25. Ms Cyd HO further reported that the Bills Committee had also discussed the issue of LegCo representation in the Council of HKU. As five LegCo Members were currently sitting on the Court of HKU which was an advisory body, some members requested HKU to include LegCo Members in its Council. Having considered members' views, the HKU Council agreed to invite one of the five LegCo Members in the Court to be a member of the HKU Council on a personal basis. Dr David LI had agreed to state expressly the relevant arrangement at the Second Reading debate on the Bill.

26. Ms Cyd HO added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July 2011 and the proposed CSAs to be moved by Dr David LI.

27. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 4 July 2011.

(c) **Report of the Bills Committee on Legislative Council (Amendment) Bill 2011**

28. 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 considered the proposed CSAs to be moved by the Administration at its meeting held in the morning of the day of the House Committee meeting. The Bills Committee had completed its scrutiny work.

29. Mr TAM Yiu-chung elaborated that some members had expressed strong objection to the replacement mechanism proposed by the Administration for filling vacancies in the membership of LegCo. These members were of the view that the Bill had proposed fundamental changes to the existing election system which would deprive the public of their rights to vote and to stand for election in a by-election. They had also expressed strong dissatisfaction with the Administration for not conducting any public consultation on the Bill before its introduction into LegCo. A member had moved a motion at a Bills Committee meeting requesting the Administration to withdraw the Bill until after comprehensive public consultation had been conducted, and the motion was negatived.

30. Mr TAM Yiu-chung further reported that some other members, however, welcomed the Administration's move to put forward the proposed replacement mechanism. In their view, although there was room for improvement in the legislative proposals and the consultation arrangement was inadequate, the proposed replacement mechanism could prevent the existing by-election arrangement from being abused in the future. These members were also of the view that the proposed replacement mechanism should not apply to vacancies arising from certain circumstances. For instance, in situations where a Member had passed away or was unable to discharge his/her duties due to serious illness, the Administration should arrange for a by-election. In the Administration's view, the replacement mechanism to be put in place should apply to vacancies in geographical constituencies ("GCs") and the District Council ("DC") (Second) Functional Constituency arising from all situations. The Administration considered its proposed mechanism appropriate as it was based on the results of the preceding LegCo general election under the proportional representation system.

31. Mr TAM Yiu-chung said that in response to members' enquiries, the Administration had explained how the Returning Officer would compile the precedence lists of candidates as replacements for filling vacancies; how the replacement mechanism would operate; and the election petition arrangement in relation to a precedence list.

32. Mr TAM Yiu-chung further reported that the Administration would move CSAs to specify the names of the persons to be included in the precedence list and the discretion of the Court in handling election petitions against a replacement returned by a precedence list. In response to members' views, the Administration would also move CSAs to improve the drafting of certain provisions in the Bill. The Bills Committee supported the relevant CSAs to be moved by the Administration. He added that the Bills Committee would submit its written report to the House Committee.

Action

33. The Chairman said that in accordance with the established procedure, the Secretary for Constitutional and Mainland Affairs ("SCMA") had written to consult her on the Administration's intention to give notice to resume the Second Reading debate on the Bill at the Council meeting of 13 July 2011.

34. In response to Mr Albert HO, the Chairman said that SCMA had given sufficient notice for the consultation on the date of resumption of the Second Reading debate on the Bill.

35. Dr Margaret NG said that in accordance with RoP, a public officer in charge of a bill should consult the chairman of the House Committee on the date of resumption of Second Reading debate on the bill. The Chairman of the House Committee should consult Members on the date of resumption proposed by the Administration.

36. The Chairman said that it had all along been the practice for Members to express their views on the date of resumption of Second Reading debate proposed by the Administration when the relevant Bills Committee reported on its deliberations to the House Committee.

37. Dr Margaret NG said that she objected to the Bill which deprived Hong Kong people of their rights to vote and to stand for election in by-elections. She also expressed strong objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July as it was a violation of procedural justice. Given the lack of public consultation on the Bill, she considered that the Administration should withdraw the Bill and undertake a comprehensive consultation on its proposals. She also considered it necessary for the Administration to explain its proposals thoroughly to the public, including the proposed election petition arrangement for a precedence list which would introduce uncertainties in the election results. She stressed that it was unjust and procedurally improper to resume the Second Reading debate on the Bill at the Council meeting of 13 July.

38. Ms Cyd HO said that the Bill concerned the public's fundamental right to vote. However, the Administration had not only failed to conduct any public consultation but also attempted to rush through the Bill within a very short period of time. She noted that the Administration had yet to submit all its CSAs to the Bills Committee. In her view, the Bills Committee had not yet completed its work and the Second Reading debate should not be resumed at the Council meeting of 13 July. She noted the sloppiness in the Bill and the papers provided by the Administration to the Bills Committee. She considered it shameful

Action

on the part of the Administration to try to rush through the Bill in haste. She objected to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

39. Mr CHEUNG Man-kwong pointed out that the Bills Committee held its first meeting the preceding Friday but reported on its deliberations at the House Committee meeting. Should the Second Reading debate on the Bill be resumed at the Council meeting of 13 July and the Bill be passed subsequently, the whole legislative scrutiny process would take only some 20 days to complete. In his view, completing the scrutiny of such an important piece of legislation impacting on the voting right of 3.3 million registered voters in Hong Kong within such a short period of time was inconceivable, unacceptable and rare in legislative history. He cited Professor Albert CHEN's view on the need to conduct public consultation on the Bill which proposed a fundamental change to the existing election system. In his view, it would be irresponsible on the part of Members to pass the Bill in haste given the lack of public consultation and inadequate public discussions. He objected to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

40. The Chairman reminded Members that the Finance Committee meeting was scheduled to be held immediately after the House Committee meeting at 3:30 pm. With the prior consent of Ms Emily LAU, Chairman of the Finance Committee, the House Committee meeting could be extended to 3:40 pm. If the discussion could not be finished by 3:40 pm, the meeting would be suspended and resumed to deal with the unfinished business on the agenda after the first Finance Committee meeting. After the House Committee had finished its business, the Finance Committee would convene its second meeting.

41. Mr LEUNG Yiu-chung said that the proposed replacement mechanism had caused grave concern in the academic, political and legal sectors. Queries had been raised as to whether the proposal was in conformity with the Basic Law ("BL") and about the absence of public consultation on the Bill proposing important changes to the election system. He sought information on whether there were similar cases in the past where the legislative process of a bill was completed within a very short period of time and whether the Administration had provided any explanation for the urgency to resume the Second Reading debate on the Bill at the Council meeting of 13 July.

42. The Chairman requested the Secretariat to compile for Members' reference information on past cases where the legislative process of a bill on which a Bills Committee had been formed was concluded within a

Action

short time. As regards the reasons for the need to resume the Second Reading debate on the Bill on 13 July, the Chairman said that according to SCMA's letter dated 21 June 2011 consulting her on the date of resumption, enactment of the Bill before the summer recess would provide sufficient notice for potential candidates to prepare for the upcoming DC elections to be held in November 2011 and the subsequent arrangements for the LegCo election in 2012. It would also enable the Administration to have one year in which to conduct publicity to inform voters that in the next LegCo election, their votes would carry the dual-effect of voting Members into office and forming the precedence list of candidates as replacements for filling vacancies arising in GCs and DC (second) Functional Constituency.

43. Mr LEUNG Yiu-chung considered the Administration's explanation absurd, unacceptable and unconvincing. In his view, never before had the Administration attached such great importance to launching publicity on the implementation of legislation and needed as long as one year for the conduct of publicity. He strongly objected to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

44. Mr Albert CHAN said that should Members rush through the Bill to tie in with the Administration's timetable, it would only bring shame on LegCo. He recalled that when the Administration introduced the controversial National Security (Legislative Provisions) Bill in 2003, there had been a three-month public consultation period. In his view, the only reason for the Administration's decision to expedite the scrutiny of the Bill without undergoing any public consultation was to avoid public concern and discussions. He pointed out that it was rare for a group of pan-democratic Members to withdraw from a Bills Committee to register their strong protest against the Administration's endeavour to rush through the Bill. He condemned the Administration for its executive hegemony and expressed deep regret for some Members' acceptance of such executive hegemony without regard to the responsibility of LegCo for scrutiny of legislative proposals. He further said that he would try to procrastinate the passage of the Bill by moving over 1000 CSAs to the Bill. Such tactics were widely used in many other democratic jurisdictions. He considered it necessary for the pan-democratic Members to act and not just to use words to express their protest. He appealed to Members belonging to the pan-democratic camp to support his move.

Action

45. Mr Ronny TONG did not see the urgency for completing the scrutiny of the Bill before the summer recess. He shared the view that SCMA's explanation was far from convincing as the proposed replacement mechanism would apply to the Fifth LegCo, the election of which would be held in 2012, and not to the DCs. Prospective candidates who planned to run for the 2012 LegCo election would have ample time to consider the impact of the Bill on their election plan. The Administration's claim that the early implementation of the Bill would enable it to have one year to conduct publicity on the proposed replacement mechanism was equally unconvincing. He stressed that the Administration could conduct publicity on the legislative proposals in parallel with the scrutiny of the Bill by LegCo, and not necessarily after the passage of the Bill. In his view, the Administration should have consulted the public on the legislative proposals before introducing the Bill, rather than trying to rush through the Bill and conducting publicity afterwards. He expressed strong objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

46. Mr LEUNG Kwok-hung said that if the resumption of the Second Reading debate on the Bill was to take place at the Council meeting of 13 July, he would use whatever means to procrastinate its passage. There had been cases in the past where the Administration was forced to withdraw its bills; a case in point was the National Security (Legislative Provisions) Bill in 2003. Should the Bill be passed by LegCo, he would continue to protest against the proposed replacement mechanism by resigning again as a Member and seeking judicial review.

47. Mr LAU Kong-wah said that he respected individual Members' wish to protest, so long as no violence was involved. In his view, the resignation of some Members for the purpose of initiating the so-called "referendum campaign" via the by-election held in May 2010 was a waste of public money, and many members of the public agreed on the need to plug the loophole in the existing election system as soon as practicable. After one year of discussion, he considered it an appropriate time for the Administration to introduce the proposed replacement mechanism. Mr LAU further said that there was urgency for the Bill to be enacted in July 2011 in order to provide sufficient notice to potential candidates for the upcoming DC election of the subsequent arrangements for the LegCo election in 2012, including the arrangement for the filling of mid-term vacancies arising in the DC (Second) Functional Constituency. Regarding the concern of some Members about the lack of public consultation on the Bill, he pointed out that the Panel on Constitutional Affairs had held a special meeting on 18 June 2011 to receive views from some 80 organizations and individuals on the proposed replacement mechanism. Different views were expressed by the deputations during

Action

the meeting which could be considered as some form of consultation. Having considered the Administration's response to the Hong Kong Bar Association's press statements, he was of the view that the Bill was in conformity with BL. He expressed support for the proposed replacement mechanism and the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

48. Ms Emily LAU said that Members belonging to the Democratic Party ("DP") strongly objected to the Administration's attempt to rush through the Bill which would deprive the public of their rights to vote and to stand for election in a by-election. She noted that many persons including Professor Albert CHEN had expressed concern about the short time for scrutiny of the Bill and public consultation and discussions. Members belonging to the pan-democratic camp including herself had withdrawn from the Bills Committee to indicate their objection to the proposed replacement mechanism. She criticized the Administration for making inaccurate reference to the replacement mechanisms in overseas countries. She was aware that some Members of the Bills Committee considered it necessary for the Secretary for Justice to respond to the concerns raised about the Bill but the response was awaiting. Given that many of the issues concerning the Bill had remained unresolved, Members belonging to DP strongly objected to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July.

49. Ms Audrey EU said that she did not see any loophole in the existing by-election arrangement. Nor did she agree with the view that the special meeting of the Panel on Constitutional Affairs on 18 June 2011 to receive views from deputations could be regarded as consultation. She pointed out that only some 80 organizations and individuals had attended the meeting with each having only three minutes to express their views. Referring to the Administration's response to the views of the Hong Kong Bar Association on the proposed replacement arrangement issued to Members on the day of the House Committee meeting, Ms EU was of the view that the Administration had failed to justify its claim that the proposed legislation was in conformity with BL. According to the Administration, as it was not specified in the BL that any casual vacancy must be filled by by-election, it could not be said that not using by-election to fill casual vacancies was tantamount to an unconstitutional deprivation of the right to vote in a by-election. She considered such a justification entirely unconvincing. She emphasized that there was no urgency for enacting the Bill before the summer recess, given that the proposed replacement mechanism was intended to apply in the Fifth LegCo. It was shameful on the part of the Administration to rush through the Bill within such a short period of time and on the part of Members to support the Administration's shameless act. Members

Action

belonging to the Civic Party strongly objected to the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July. She requested that the matter be put to vote.

50. Mr WONG Yuk-man queried the need to put the matter to vote as Members were only consulted on the resumption of the Second Reading debate on the Bill. The Chairman said that as diverse views had been expressed, the established practice was to put the matter to vote.

51. In response to Mr Albert CHAN, the Chairman said that the deadline for giving notice of CSAs to the Bill was Monday, 4 July 2011.

52. Mr Albert CHAN said that in view of the large number of CSAs to be moved by him to the Bill, which entailed enormous amount of work and the Administration's late provision of its proposed CSAs to the Bills Committee, it would be practically difficult for him to meet the deadline for giving notice of CSAs. He enquired whether the House Committee would recommend to the President to consider waiving the requisite notice requirement.

53. At the invitation of the Chairman, Secretary General said that she did not recall at this moment whether the President had waived the notice requirement for the moving of CSAs to a bill. Any such request would be considered by the President on a case-by-case basis. She took note of Mr Albert CHAN's request.

54. The Chairman put to vote the question that the House Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July 2011. Ms Audrey EU requested to claim a division.

The following Members voted in favour of the question:

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

(26 Members)

The following Members voted against the question:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, 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 WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Hon WONG Yuk-man.
(21 Members)

The following Member abstained:

Mr Paul TSE
(1 Member)

55. The Chairman declared that 26 Members voted in favour of and 21 Members voted against the question, and one Member abstained. The question was supported. The Chairman said that she would relay to the Administration the different views expressed by Members and the House Committee's decision.

(d) Report of the Subcommittee on Five Orders Made under Section 49 of the Inland Revenue Ordinance and Gazetted on 13 May 2011

(LC Paper No. CB(1) 2552/10-11)

56. Mr James TO, Chairman of the Subcommittee, said that the objects of the Five Orders were to give effect to the comprehensive agreements signed between the Government of the Hong Kong Special Administrative Region ("HKSARG") and the governments of Japan, France, the Principality of Liechtenstein and New Zealand for the avoidance of double taxation and the prevention of fiscal evasion, and the amendments to the comprehensive agreement signed between HKSARG and the Government of the Grand Duchy of Luxembourg on 2 November 2007.

57. Mr James TO further reported that the Subcommittee had held one meeting. In examining the five Orders, the Subcommittee had focused on how Hong Kong residents and enterprises would benefit from the relevant comprehensive agreements; the differences between certain provisions in these agreements and the impact of such differences, in particular on the rights of the residents of the contracting parties; and whether there were sufficient safeguards in the comprehensive agreements to protect the privacy and confidentiality of local taxpayers'

Action

information. The Subcommittee noted the inclusion of appropriate provisions to safeguard the interests and confidentiality of personal information of local taxpayers. He added that the Subcommittee supported the five Orders and would not propose any amendment to the Orders.

58. The Chairman reminded Members that as the deadline for amending these Orders was 6 July 2011, the deadline for giving notice of amendments, if any, was Tuesday, 28 June 2011.

(e) Report of the Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission Ordinance
(LC Paper No. CB(2) 2162/10-11)

59. Mr IP Kwok-him, Chairman of the Subcommittee, reported that the Subcommittee had held four meetings to examine the Nine Amendment Regulations made by the Electoral Affairs Commission ("EAC"). Members supported the measures proposed by EAC to improve the submission of declarations and copy of electronic election advertisements to the Returning Officer by electronic means. However, members expressed disappointment that the improvement measures would not be applicable to printed advertisements. EAC had undertaken to make reference to the experience in the 2011 District Council ("DC") Election and Election Committee Subsector Elections and explore the feasibility of accepting electronic submission of more types of election materials.

60. Mr IP Kwok-him further reported that after considering members' views, the Administration had agreed to amend the annual cut-off date for filing applications for registering the particulars relating to candidates on ballot papers from 15 April to 15 June for the DC election years. The Administration would also extend the deadline to 15 July 2011 to facilitate the filing of applications by political parties and candidates who wished to participate in the 2011 DC Election.

61. Mr IP Kwok-him added that the Administration would move two technical amendments to the EAC (Electoral Procedure) (LegCo) (Amendment) Regulation 2011 at the Council meeting of 6 July. The Subcommittee supported the amendments. He referred Members to the Subcommittee's report for details of its deliberations.

62. The Chairman reminded Members that as the deadline for amending these Amendment Regulations was 6 July 2011, the deadline for giving notice of amendments, if any, was Tuesday, 28 June 2011.

(f) **Report of the Subcommittee on Professional Accountants
(Amendment) Bylaw 2011**
(LC Paper No. CB(1) 2553/10-11)

63. Mr James TO, Chairman of the Subcommittee, said that the object of the Amendment Bylaw was to enable members of the Council of Hong Kong Institute of Certified Public Accountants ("HKICPA") who were unable to physically attend a HKICPA Council meeting to participate in the meeting and vote by ballot through electronic means. This would facilitate, in particular, the annual election of President and Vice Presidents of HKICPA Council by its members, which should be determined by ballot as provided in bylaw 12(4).

64. Mr James TO elaborated that the Subcommittee had held two meetings with the Administration and HKICPA. The Subcommittee had noted the need for the HKICPA Council to follow the global trend in allowing participation in meetings and voting through electronic means. Members had expressed concern about the difficulty in ensuring the confidentiality of the meetings, as well as fairness and security of the voting process on the part of members participating at remote locations. HKICPA had advised that it would update the undertaking to require members to maintain confidentiality of the meeting proceedings. To facilitate the ballot arrangement, HKICPA had also purchased a secure online collaboration platform.

65. Mr James TO further reported that in view of the importance of the election of President and Vice Presidents of HKICPA Council and in order to avoid queries about the integrity and credibility of the election, some members suggested that HKICPA should consider setting a limit on the number of members who might participate and vote in the election through electronic means. HKICPA had advised that as the Amendment Bylaw had been unanimously approved by the HKICPA Council and HKICPA members at HKICPA's Annual General Meeting, the HKICPA Council had reservations about making further amendment to the Amendment Bylaw. Nevertheless, the HKICPA Council had undertaken to request its Governance Review Task Force ("Task Force") to consider the suggestion. HKICPA had also agreed to convey to the Task Force members' proposals for improving the voting procedure and enhancing the transparency of the HKICPA Council. Mr TO added that the Administration would move a technical amendment to the newly added bylaw 8(5). The Subcommittee would not propose any amendments.

66. The Chairman reminded Members that as the deadline for amending the Amendment Bylaw was 6 July 2011, the deadline for giving notice of amendments, if any, was Tuesday, 28 June 2011.

(g) Report of the Subcommittee on Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011

67. Mr WONG Ting-kwong, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. He said that the Subcommittee had held one meeting and had completed its scrutiny work. It would provide a written report in the following week.

68. Mr WONG Ting-kwong elaborated that the Amendment Notice sought to adjust from 1 November 2011 onward the Minimum Relevant Income Level ("Min RI") for contribution purpose under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") from HK\$5,000 to HK\$6,500 per month with reference to the hourly statutory minimum wage rate and the median monthly working hours.

69. Mr WONG Ting-kwong reported that members had expressed concern that there might be cases where employers were not aware of the implementation of the revised Min RI and continued to use the obsolete Min RI for employees' contribution to the Mandatory Provident Fund ("MPF"). Members had sought clarification on whether this would constitute a criminal offence. According to the Administration, section 32 of the Employment Ordinance (Cap. 57) ("EO") prohibited employers from deducting from employee's wages except where allowed in specified circumstances. The maximum penalty for breaching section 32 of EO was a fine of \$100,000 and imprisonment for one year. The employer concerned had the right to be heard by the Commissioner for Labour and the Commissioner had to give written consent to commence prosecution.

70. Mr WONG Ting-kwong further reported that the Subcommittee supported in principle the proposed adjustment to Min RI to lessen the financial burden of MPF contributions on low-paid employees. Some members had suggested that the Administration should advance the implementation of the new Min RI from 1 November 2011 to 1 September 2011 so that low-paid employees could benefit from the proposed adjustment as early as possible.

71. Mr WONG Ting-kwong added that the Administration would move the proposed resolution on the Amendment Notice at the Council meeting of 29 June 2011 and the deadline for giving notice of amendments had expired on 22 June 2011. He reminded Members who intended to move amendments to seek the President's approval for waiving the requisite notice period as soon as possible.

VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 2149/10-11)

72. The Chairman said that there were 12 Bills Committees, seven subcommittees under the House Committee (i.e. two subcommittees on subsidiary legislation, two subcommittees on policy issues and three subcommittees on other Council business) and 10 subcommittees under Panels in action.

IX. Proposed overseas duty visit to the Republic of Korea by the Panel on Manpower

(LC Paper No. CB(2) 2164/10-11)

73. Mr LEE Cheuk-yan, Chairman of the Panel, said that the Panel sought the House Committee's permission to conduct an overseas duty visit to the Republic of Korea, scheduled tentatively from 24 to 28 July 2011, to study its experience in the implementation of standard working hours.

74. Mr LEE Cheuk-yan referred Members to the paper for details of the purpose, programme and funding arrangements of the visit, and added that as at 21 June 2011, eight Panel members and four non-Panel Members had indicated interest in joining the visit. A report would be submitted to the House Committee after the visit. He appealed to Members to support the proposed visit.

75. Members gave permission for the Panel to undertake the duty visit under rule 22(v) of the House Rules ("HR").

X. Priority allocation of a debate slot to the Chairman of the Public Accounts Committee

(LC Paper No. PAC 153/10-11)

XI. Priority allocation of a debate slot to the Chairman of the Committee on Members' Interests ("CMI")

(LC Paper No. CMI 120/10-11)

76. Members agreed to discuss jointly the two agenda items.

77. At the invitation of the Chairman, Dr Philip WONG, Chairman of the Public Accounts Committee ("PAC"), said that the PAC's Report on the Director of Audit's Report No. 56 would be tabled in the Council on 6

Action

July 2011. One of the chapters of the PAC Report was on "Hong Kong 2009 East Asian Games".

78. Dr Philip WONG further said that the problems identified in the Director of Audit's Report on the planning, organization and implementation of the 2009 East Asian Games had aroused much public concern. For the purpose of enabling Members to express views on the issues examined by PAC as well as its conclusions and recommendations at a Council meeting, PAC had decided to seek the approval of the House Committee for the priority allocation of a debate slot for him, in his capacity as Chairman of PAC, to move a motion for debate at the Council meeting of 13 July 2011 on the relevant chapter of the PAC Report. The wording of the motion was set out in the Appendix to the paper.

79. Dr Philip WONG added that should the House Committee accede to the request, PAC requested that the speaking time limit for the debate should be 15 minutes for each Member. He appealed to Members to support PAC's requests.

80. At the invitation of the Chairman, Mrs Sophie LEUNG, Chairman of the Committee on Members' Interests ("CMI"), said that CMI requested the House Committee to consider the priority allocation of a debate slot for her, in her capacity as Chairman of CMI, to move a motion for debate on issues in relation to procedural rules on pecuniary interests as set out in the Report of CMI on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK ("the CMI Report") at the Council meeting of 13 July 2011.

81. Mrs Sophie LEUNG said that CMI had not moved any motion for debate on its reports submitted to the Council in the past. On this occasion, members considered it necessary to do so in order to enable Members to express their views on the issues set out in the CMI Report. She elaborated that CMI had spent considerable time on discussing the issue of whether a Member's position as a non-executive director of a company might give rise to a situation under which the Member was considered to have a pecuniary interest by virtue of that position and hence required to make disclosure under RoP 83A. CMI had recommended that five principles be applicable to RoP 83A. One of the principles was that if a subsidiary of a company ("parent company") had bid for a contract or had been awarded a contract under a project under consideration by a committee, then, a Member who was a director of that parent company was regarded as having an indirect pecuniary interest in the project and should disclose the nature of the pecuniary interest. The Member should take reasonable steps to find out the nature of the business of the parent company as well as the subsidiary company for the purpose of making the required disclosures under RoP 83A.

Action

82. Mrs Sophie LEUNG added that for Members' advance information, she would also move, on behalf of CMI, an admonishment motion at the Council meeting of 13 July 2011, which would be held before the motion debate on the CMI Report.

83. In response to Mr IP Kwok-him, the Chairman said that pursuant to HR 13(a), no more than two debates initiated by Members should be held at each regular Council meeting. However, more than two such debates might be allowed by the President under special circumstances upon the recommendation of the House Committee.

84. The Chairman invited Members' views on the requests of PAC and CMI.

85. Ms Emily LAU expressed support for the holding of motion debates on the reports of PAC and CMI, both of which were standing committees of the Council, as important issues were raised in their reports.

86. Members agreed to the priority allocation of debate slots to the Chairmen of PAC and CMI at the Council meeting of 13 July. Members also agreed that the debate on the PAC Report would take place before that on the CMI Report and the speaking time limit for the debate on the PAC Report should be 15 minutes for each Member.

87. The Chairman then invited Members' views on whether there should be any other debates on Members' motions without legislative effect at the Council meeting of 13 July.

88. Mr Ronny TONG was of the view that there should be no other debates on Members' motions without legislative effect, having regard to the heavy business to be dealt with at that Council meeting, one of which was the resumption of the Second Reading debate on the controversial Legislative Council (Amendment) Bill 2011.

89. Mr IP Kwok-him expressed concern about the long agenda for the Council meeting of 13 July. He shared Mr Ronny TONG's view that there should be no other debates on Members' motions without legislative effect at the Council meeting of 13 July. In his view, both the capacity and attention of Members were practical considerations and should be taken into account.

Action

90. The Deputy Chairman said that he had applied for a debate slot for seven times unsuccessfully in the current session. He would be allocated a debate slot for the last Council meeting. While supporting the requests of PAC and CMI for the allocation of debate slots for moving motions on their reports, he considered that individual Members' right to move motion for debate should be respected.

91. Ms Cyd HO said that she was a member of PAC. She supported the requests of PAC and CMI for the priority allocation of debate slots at the Council meeting of 13 July as the issues covered in their reports were worthy of discussion. As that would be the last Council meeting in the current session, she considered that individual Members' wish to move motions for debate on issues of their concern should be accommodated as far as practicable.

92. Mr Paul TSE said that Members should be practical and take into account their own capability in considering the number of motion debates at the Council meeting of 13 July. In his view, holding too many motion debates at a Council meeting would affect the quality of the debates. As long debates were expected on the Legislative Council (Amendment) Bill 2011, he considered that the practical arrangement was to deal with urgent and pressing business at the Council meeting of 13 July. He sought clarification on whether there was any urgency of holding motion debates on the PAC Report and the CMI Report and the viability of deferring the debates to a Council meeting in the next session.

93. The Chairman said that according to past practice, the Chairman of PAC would move a motion for debate on selected chapter(s) of its report at the earliest Council meeting following the tabling of the report. As PAC would table its Report at the Council meeting of 6 July 2011, the request was therefore to hold the motion debate at the Council meeting of 13 July. As the CMI Report had been tabled at the Council meeting of 22 June 2011, it was also necessary for the motion debate on the Report and the admonishment motion to be held at the earliest Council meeting.

94. Mrs Sophie LEUNG said that the CMI Report concerned a complaint against three Members in relation to the disclosure of pecuniary interest in the project to construct the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link. As CMI had spent much time deliberating the relevant issues relating to procedural rules on pecuniary interests before coming up with its recommendations, the debate on the CMI Report should be conducted as early as practicable to bring an early resolution to the matter for the Members concerned.

Action

95. The Chairman invited Members' view on the holding of two Members' motions without legislative effect in addition to the motion debates on the PAC Report and CMI Report at the Council meeting of 13 July. Members raised no objection to such an arrangement.

96. As it was already 3:45 pm, the Chairman said that the House Committee meeting had to be suspended and would be resumed after the Finance Committee meeting to deal with the unfinished business.

(The meeting was suspended at 3:45 pm and resumed at 5:37 pm.)

XII. Proposal of Hon Emily LAU Wai-hing to seek the Legislative Council's authorization to empower the Panel on Information Technology and Broadcasting to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance to inquire into the selection process for the Internet Learning Support Programme

(Letter dated 21 June 2011 from Hon Emily LAU Wai-hing to the Chairman of the House Committee (LC Paper No. CB(2) 2165/10-11(01))

97. At the invitation of the Chairman, Ms Emily LAU said that in the past few months, there had been much controversy over the selection process for the \$220 million Internet Learning Support Programme ("ILSP"). Mr Jeremy Godfrey, former Government Chief Information Officer ("GCIO") who led the ILSP assessment work, had resigned and alleged that senior Government officials had implied to him that it was a political assignment to award the contract to the Internet Professional Association ("iProA") which was affiliated with the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB"). A public call mounted for an inquiry into whether there had been political interference in the selection process for the implementer of ILSP. She stressed the importance of conducting an inquiry into the matter which had affected the public's confidence in the credibility of the Government's tendering system. During the meetings of the Panel on Information Technology and Broadcasting ("the Panel"), Mr Godfrey had made many allegations against senior Government officials. He had also indicated that a third party would only be willing to speak out on the matter with the protection given under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("P&P Ordinance"). Hence, her proposal to seek the Council's authorization to empower the Panel to exercise the powers under the P&P Ordinance. Ms LAU cited the precedent where the Panel on Security had been empowered to exercise the powers under the P&P

Action

Ordinance to investigate into Mr Alex TSUI Ka-kit's case. In her view, LegCo should conduct an inquiry into the matter to do justice to all parties concerned and to make recommendations on improving the tendering system.

98. Mr Ronny TONG expressed support for Ms Emily LAU's proposal. He said that all the allegations could be boiled down to the question of whether the Administration had exerted political interference in the selection process for ILSP. In his view, there was a prima facie case for the allegations based on what the Government officials had said during the two special Panel meetings. The Financial Secretary ("FS") himself and Mr Duncan Pescod, former Permanent Secretary for Commerce and Economic Development (Communications and Technology) ("PSCT") admitted that FS had indicated before the selection process that iProA was a suitable implementer for ILSP. During the selection process, both Mr Duncan Pescod and Mr Frankie YIP, Political Assistant to FS, had enquired about the chance of iProA being awarded the contract. Furthermore, while the Hong Kong Council for Social Service ("HKCSS") had the highest score, it was not awarded the contract. The alleged political interference, be it deliberate or inadvertent, had undermined the credibility of the Government's tendering system. He considered it necessary to invoke the powers under the P&P Ordinance to inquire into the matter and to do justice to the parties concerned. It would also enable the Panel to summon the third party who, according to Mr Godfrey, had mentioned to him about the political assignment relating to election. Mr TONG stressed that it was in the public interest for LegCo to inquire into the matter and appealed to Members to support the proposal.

99. Mr LEE Wing-tat said that he had attended the two special Panel meetings but was only able to ask one question for five minutes at each of the meetings. Mr Jeremy Godfrey accused senior Government officials of having interfered in the selection process to benefit a political party. Having regard to the gravity of the accusations made by Mr Godfrey, who was responsible for the selection process, he considered it necessary to conduct an inquiry into the matter. He stressed the importance for the Government's tendering system to be fair, just and open. As the public had already raised doubt about the fairness of the selection process, should LegCo not conduct the inquiry, the public would have the perception that the Administration and some LegCo Members were trying to hide the truth, and this would undermine the governance of the Administration.

100. Mr Albert CHAN said that he was not a Panel member. He had perused the relevant documents and supported the proposal for conducting an inquiry into the matter to find out the truth. He found it surprising that there were only two bidders for ILSP and both had affiliations with political parties. Dr LAW Chi-kwong of HKCSS was a member of DP while the founder of iProA was a member of DAB. As the matter might involve the political interests of two political parties and the relationship between senior Government officials and members of certain political parties, he stressed that the scope of the inquiry should be comprehensive. He considered it necessary to invoke the powers under the P&P Ordinance to inquire into the matter to do justice to the public and to ensure proper use of public funds.

101. Dr PAN Pey-chyou considered it unfair that attention had been focused on iProA's political affiliations but not that of HKCSS. He said that he had attended the Panel meetings and noted that Mr Jeremy Godfrey had not been clear and consistent in making his accusations against senior Government officials and members of a political party. His accusations had pointed at different persons including Dr Elizabeth QUAT of DAB and Mrs Rita LAU, the former Secretary for Commerce and Economic Development ("SCED") but varied at different junctures. As a civil servant, Mr Godfrey should not have regard to political considerations in discharging his duties and should not be pressurised to undertake any political assignment. However, he chose to speculate and did by his own way not in accordance with the established procedures. Dr PAN considered Mr Jeremy Godfrey's accusations self-conflicting and illogical and that there lacked justifications for LegCo to invoke the powers under the P&P Ordinance to conduct an in-depth inquiry.

102. Ms Cyd HO said that based on the documents provided by the Administration, its replies to two relevant oral questions raised at Council meetings and its response to the questions raised by Members at the two Panel meetings, there had already been sufficient basis for LegCo to inquire into the matter. Many problems were found with the tendering process for ILSP. For instance, the contract was not awarded in accordance with the scoring results and an approach different from the one specified in the tender was subsequently adopted for implementing ILSP. As substantial sums of public funds were spent each year on projects awarded through competitive bidding, she considered it necessary to inquire into the matter to ensure that public funds had been properly spent. She further said that as the speaking time at Panel meetings was often limited to three to five minutes for each member, members could hardly probe into the matter to find out the truth. For the purpose of conducting a comprehensive and fruitful inquiry into the matter, LegCo should invoke the powers under the P&P Ordinance.

103. Mr LEUNG Kwok-hung quoted Mr KAM Nai-wai's case and said that Members should not use different yardsticks at different times to decide whether to inquire into a matter of public concern. He shared Mr Ronny TONG's view that there was a prima facie case for the allegations made by Mr Jeremy Godfrey. In his view, it was abnormal for four senior Government officials to have taken up the same matter with Mr Godfrey. Since the third party referred to by Mr Godfrey was willing to come forward to give evidence only with the protection provided under the P&P Ordinance, he considered that Members should support the invocation of the powers under the P&P Ordinance to enable LegCo to conduct an inquiry into the matter.

104. Dr Margaret NG said that the matter was serious as substantial sums of public money were involved in competitive bidding every year. She stressed that the issue at stake was not whether one political party had been treated more favourably than another in the ILSP selection process but whether persons with connections were accorded favourable treatment. This touched on the fundamental value of Hong Kong and was therefore important. Mr Jeremy Godfrey, who was in the picture of the selection process, had made specific allegations supported by concrete facts. Mr Godfrey had also made an affidavit saying that he had told the truth. Given the gravity of the matter and the specific allegations made by Mr Godfrey, she expressed support for invoking the powers under the P&P Ordinance to inquire into the matter to find out the truth.

105. Mr Albert HO considered Mr Jeremy Godfrey's accusations very serious as they involved the question of whether there had been political interference by senior Government officials in the assessment of bids. The matter was of fundamental importance as it would affect the image of Hong Kong and the operation of the Government. Senior Government officials including FS, the former SCED and the former and incumbent PSCT were involved. An important witness had also indicated willingness to give evidence should he/she be accorded protection under the P&P Ordinance. Should LegCo not inquire into such a serious matter, it would give the public the perception that LegCo was trying to hide the truth and the Members not supporting the conduct of an inquiry would have to bear the responsibility of denying the public of their right to know. He clarified that HKCSS was under the leadership of Mr Bernard CHAN, not Dr LAW Chi-kwong, and a total of five bidders had submitted proposals for ILSP. He would welcome the inquiry to cover whether members of DP or any DP-affiliated organization was involved in the matter. He supported the invocation of the powers under the P&P Ordinance to conduct an inquiry into the matter.

Action

106. Mr LEE Cheuk-yan said that the matter had undermined public confidence in two important cornerstones of Hong Kong, namely, a fair, just and open Government tendering system free from political interference and considerations, and the political neutrality of civil servants. He considered it necessary to conduct a comprehensive and thorough investigation to find out whether there had been any political interference in the ILSP selection process, in order to do justice to all parties concerned and restore public confidence in the integrity of the Government system.

107. Mr LAU Kong-wah said that he was a member of the Panel and had attended the two special Panel meetings. After perusing all the relevant documents, he had come up with some observations and analyses on the matter. He elaborated that before announcing the inclusion of ILSP in the 2010 Budget, FS had set up a task force to study the viability of the initiative. The task force concluded that it would be commercially viable to set up a social enterprise with the mission to provide low-cost Internet access, affordable computers and training for parents and children of low-income families. Under such a context, he considered it understandable for relevant Government officials to mention about the suitability of certain organizations as the implementer of ILSP. Following the announcement of ILSP in the 2010 Budget, the Government launched an open Request for Proposal ("RFP") between May and July 2010 with a view to identifying a non-profit organization to take forward the programme implementation. Five proposals were received by the deadline for submission. They were assessed by an evaluation panel led by Mr Godfrey and comprising representatives of the Education Bureau and the Office of the Telecommunications Authority. In his view, there might be a prima facie case of political considerations should iProA be given the highest score by all the assessors from the three different Government offices. However, the fact was that while Mr Godfrey gave iProA the highest score, HKCSS was awarded the highest score by the other two assessors.

108. Mr LAU Kong-wah further said that instead of awarding the contract to HKCSS on the basis of the scoring results, it was Mr Godfrey himself who proposed inviting the two leading contenders to collaborate. A review committee was subsequently established to review the propriety of the collaborative approach proposed by Mr Godfrey. As the two organizations had difficulty in reaching agreement on collaboration, various fallback options had been considered, including the setting up of an FS Incorporated company ("FSI"), initiating a fresh tender and a dual implementer approach. The FSI option was not considered feasible given that the two organizations had difficulties in collaborating, while the re-tendering option would result in delay in the implementation of

Action

ILSP. Under such circumstances, he considered it reasonable for the Administration to pursue the dual implementer approach. In his view, such a decision was not based on political considerations. It should be noted that both HKCSS and iProA accepted the dual implementer approach proposed by the Administration. According to information provided by Mr Godfrey and the Administration, around end of last year, Mr Godfrey was disturbed by media reports on him concerning the selection process and began to feel political pressure. Mr Godfrey had admitted that he was a sensitive person. It was clear from the relevant email correspondence that there were divergent views between him and his supervisor/ subordinates on the matter.

109. Mr LAU Kong-wah further said that on the basis of the information available, it could be concluded at this stage that it was inappropriate to invoke the powers under the P&P Ordinance to inquire into the matter. In his view, the matter had come about because of fierce competition between the two leading proponents, breakdown of working relationship between PSCT and Mr Godfrey, the attempt by some political parties to capitalize on the matter to smear other political parties and the sensitive character of Mr Godfrey. Mr LAU considered it unnecessary and unfair to the public officers involved to inquire into the matter, which would affect the implementation of ILSP by HKCSS and iProA.

110. Mr WONG Kwok-kin said that the allegations made by Mr Jeremy Godfrey were not substantiated by hard evidence and did not warrant the exercise of the powers under the P&P Ordinance to conduct an inquiry. He stressed that the powers under the P&P Ordinance should not be invoked lightly. He pointed out that HKCSS should be awarded the contract on the basis of the scoring results and it was Mr Godfrey who proposed to invite the two leading proponents to collaborate. Yet, it was also Mr Godfrey who alleged that it was a political assignment to select iProA. In Mr WONG's view, Mr Godfrey made the allegations as he was aggrieved by the decision not to renew his contract. He said that Members belonging to the Hong Kong Federation of Trade Unions did not support the proposal of conferring the Panel with the powers under the P&P Ordinance to inquire into the selection process for ILSP.

111. Mr LEUNG Yiu-chung said that an investigation should be conducted into the matter to find out whether there had been political smearing and whether the allegations had done injustice to the civil servants involved. He pointed out that the matter had aroused grave concern in the community. The allegations, which concerned the credibility and governance of the Administration, were serious. He considered it necessary to conduct a thorough investigation to find out the truth and to do justice to all parties concerned.

Action

112. Dr PAN Pey-chyou said that he would support LegCo conducting an inquiry if there was sufficient evidence suggesting favouritism or transfer of interests. However, in the present case, Mr Jeremy Godfrey had not been clear and consistent in his accusations against senior Government officials and members of a political party. According to the documents made available to the Panel by various parties, Mr Godfrey's supervisors had repeatedly reminded him to observe procedural propriety and it was Mr Godfrey himself who had deviated from normal Government practice. Dr PAN also questioned why Mr Godfrey made his accusations only after he had left the Government, which raised doubt as to whether the accusations were motivated by his failure in securing further employment in the Government. He cautioned against LegCo being used as a tool to bring shame on the Administration. He added that the decision to establish an investigation committee to inquire into Mr KAM Nai-wai's case was made by the House Committee and his political affiliation was not a consideration for the decision.

113. Mr Alan LEONG noted that FS had not named any bidders other than iProA and considered it worth examining whether any senior Government officials had attempted to put pressure on Mr Godfrey to select a particular implementer. He stressed the need to conduct an inquiry into the grave allegations which concerned the fundamental question of the integrity of the Government's tendering system. As Ms Emily LAU's proposal might be put to vote, he sought advice from the Legal Adviser ("LA") on the requirements under RoP with regard to voting such as disclosure of interests and withdrawal.

114. At the invitation of the Chairman, LA said that according to RoP 84(1), in the Council or in any committee or subcommittee, a Member should not vote upon any question in which he had a direct pecuniary interest except where his interest was in common with the rest of the population of Hong Kong or a sector thereof or his vote was given on a matter of Government policy.

115. The Chairman said that pursuant to RoP 83A, a Member should not move any motion or amendment relating to a matter which he had a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he disclosed the nature of that interest.

116. Mr Andrew LEUNG said that he was a member of the Panel and had perused all relevant documents provided by different parties. He considered that Mr Jeremy Godfrey was not a credible witness. Mr Godfrey had made serious allegations but so far he had not produced any evidence to substantiate them. Based on the information provided, Mr Godfrey was the one who had deviated from the normal Government

Action

practice, notwithstanding repeated advice from his supervisors and subordinates. Mr LEUNG also queried why Mr Godfrey had made the accusations only after he had vacated his post as GCIO. In his view, the allegations were prompted by a breakdown of working relation between PSCT and Mr Godfrey and the non-renewal of Mr Godfrey's contract. As Mr Godfrey had failed to provide any evidence to substantiate his accusations, Mr LEUNG considered that LegCo should not waste time and resources to inquire into the matter. In his view, the bidding and selection process for ILSP could be followed up by the Office of The Ombudsman or the Audit Commission if necessary. He said that Members belonging to the Economic Synergy objected to the proposal of conferring the Panel with the powers under the P&P Ordinance to inquire into the selection process for ILSP.

117. Mrs Sophie LEUNG did not agree to the view that there were deficiencies with the existing tendering system. Neither did she consider that a remark on the suitability of iProA as the implementer was tantamount to putting political pressure on Mr Jeremy Godfrey. It appeared that Mr Godfrey had not discharged his duties during the whole selection process in accordance with certain established principles. She stressed that the threshold for invoking the powers under the P&P Ordinance should not be so low as to base on flimsy allegations made by Mr Godfrey against senior Government officials. The invocation of the powers under the P&P Ordinance under such circumstances would make a mockery of Members' wisdom. In her view, if problems were identified in the existing tendering system, the review should be conducted by the Administration.

118. Mr Paul TSE considered it necessary to make clear whether the problem lay with the tendering system or the implementation of the system. Assuming that the account of events given by Mr Jeremy Godfrey was credible as it was supported by an affidavit, he had reservations about whether there was a prima facie case for conducting an inquiry as Mr Godfrey himself had admitted that he had not been influenced by political pressure. Mr TSE also questioned the appropriateness of invoking the powers under the P&P Ordinance to inquire into the matter which involved mostly oral evidence. He doubted whether Members had the expertise for cross-examination of witnesses who provided mainly oral evidence and whether Members could obtain further information from the Administration, given that it had already provided some 1 000 pages of documents to the Panel. He stressed that in considering whether to invoke the powers under the P&P Ordinance, Members should balance the benefits to be obtained and the resources required for conducting the inquiry. Based on the available information, the benefits to be obtained did not justify the conduct of an inquiry. At the present stage, he tended not to support the invocation of the powers under the P&P Ordinance to inquire into the matter.

Action

119. Mr LEUNG Kwok-hung said that the invocation of the powers under the P&P Ordinance would enable Members to summon witnesses and order the production of necessary documents. He stressed the importance of conducting an inquiry to find out the truth and to do justice to all parties concerned. He did not subscribe to the view that it was a waste of resources to conduct an inquiry into the matter. He pointed out that the inquiry could be completed very soon if there was no evidence to substantiate the allegations.

120. Ms Cyd HO said that in the documents made available to the Panel and the Administration's reply to an oral question raised at the Council meeting of 8 June 2011, material inconsistencies were noted in the Administration's stance including that of Ms Elizabeth TSE, PSCT, over the collaborative approach advocated by Mr Jeremy Godfrey. Furthermore, while the Administration stated in its paper that there was a lack of consensus on the overall assessment, the evaluation report indicated that the majority of the assessors had given the highest score to HKCSS. As many questions remained unanswered, she considered it necessary to conduct an inquiry to find out the truth so as to discharge LegCo's duty of monitoring the Government.

121. Mr LAU Kong-wah said that he could make observations and conclusions on the matter because he had read all the documents. He did not consider it necessary to conduct an inquiry into the matter for the purpose of clearing the name of DAB. In his view, it was clear from the relevant documents that all the civil servants involved had acted professionally and there was no question of favouritism or political interference. He did not consider that a case had been made out for the invocation of powers under the P&P Ordinance to inquire into the selection process for ILSP.

122. Mr Ronny TONG said that in considering whether an in-depth inquiry should be conducted, Members should focus on the question of whether there had been any political interference, instead of whether Mr Jeremy Godfrey had acted rightly or wrongly. The crux of the matter was FS's motive in conveying to Mr Jeremy Godfrey, who led the ILSP assessment work, his view on iProA before and during the evaluation process. Mr TONG pointed out that during the second special Panel meeting, Mr Godfrey had indicated that he could not tell for certain whether he had been influenced by political pressure. In Mr TONG's view, political interference, be it successful or not, warranted further investigation given its seriousness. He reiterated that there was a prima facie case for the accusations based on what the Government officials had said during the two special Panel meetings, and it was incumbent upon LegCo to investigate into the matter to find out the truth.

Action

123. Dr Margaret NG said that the conduct of an inquiry should not be seen as a humiliation to senior Government officials. In the course of conducting an inquiry, procedural propriety would be observed and due respect would be given to witnesses. If Members were of the view that there was no sufficient evidence suggesting unfairness and political interference after reviewing the relevant documents, the inquiry could be put to a halt. She pointed out that it had yet to answer as to why the bidder with the highest score was not selected after the collaboration approach was found unviable. Given the gravity of the allegations made by Mr Jeremy Godfrey who had rung an alarm to the tendering system, she considered it necessary to conduct an inquiry into the matter.

124. Ms Emily LAU reiterated the need to invoke the powers under the P&P Ordinance to conduct an in-depth inquiry into the selection process for ILSP, given the controversy over the matter and the procedural propriety of the Government's tendering system at stake. She appealed to Members to support her proposal. She added that should her proposal not be supported by the House Committee, she would give notice to move a motion at the Council meeting of 13 July 2011 to seek the Council's authorization to exercise the powers conferred by the P&P Ordinance to inquire into the matter.

125. The Chairman put to vote Ms Emily LAU's proposal for seeking LegCo's authorization to empower the Panel to exercise the powers under the P&P Ordinance to inquire into the selection process for ILSP. Mr CHEUNG Kwok-che declared interest that he was a member of HKCSS's Executive Committee. 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, 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.

(21 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 TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy

Action

CHEUNG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE.
(27 Members)

126. The Chairman declared that 21 Members voted for and 27 Members voted against the proposal and no Member abstained. Ms Emily LAU's proposal was negated.

127. There being no other business, the meeting ended at 7:02 pm.

Council Business Division 2
Legislative Council Secretariat
7 July 2011