

立法會
Legislative Council

LC Paper No. CB(2) 2016/11-12

Ref : CB2/H/5/11

House Committee of the Legislative Council

**Minutes of the 22nd meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 11 May 2012**

Members present:

Hon Miriam LAU Kin-yee, 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
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
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 LI Fung-ying, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun, 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:

Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Dr Hon LEUNG Ka-lau
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, 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

Mr Andy LAU	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
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	Acting Senior Assistant Legal Adviser 4
Miss Erin TSANG	Acting Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Flora TAI	Chief Council Secretary (2)3
Ms Amy YU	Chief Council Secretary (2)6
Ms Miranda HON	Chief Council Secretary (4)2
Ms Wendy KAN	Assistant Legal Adviser 6
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Josephine SO	Senior Council Secretary (2)7
Ms Judy TING	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

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I. Confirmation of the minutes of the 21st meeting held on 4 May 2012
(*LC Paper No. CB(2) 1929/11-12*)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that CS had indicated that he was aware of the current situation of the Council's processing of bills. The Administration would consider the overall legislative schedule in proposing the resumption of Second Reading debates on the various Bills.

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) **Inland Revenue (Amendment) Bill 2012**
(LC Paper No. LS 61/11-12)

3. The Chairman said that the Bill sought to give effect to the proposals concerning tax concessions in the 2012-2013 Budget.
4. Mr James TO considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr James TO agreed to join the Bills Committee.
5. The Chairman said that the Secretariat would issue a circular to invite Members to join the proposed Bills Committee. Should less than three Members join the Bills Committee by the deadline for signification of membership, the Bills Committee would not be formed in accordance with the House Rules. Members noted the arrangement.
6. The Chairman further said that as there were vacant slots, the Bills Committee could commence work immediately.

(ii) **Professional Accountants (Amendment) Bill 2012**
(LC Paper No. LS 59/11-12)

7. The Chairman said that this was a Member's Bill to be introduced by Mr Paul CHAN. The Bill was scheduled for first and second reading at the Council meeting of 9 May 2012. As it had yet to receive its first and second reading, the House Committee would decide on the need to form a Bills Committee after the Bill had been read the first and second times and was referred to the House Committee in accordance with Rule 54(4) of the Rules of Procedure. Members noted the arrangement.
8. In response to Mr Jeffrey LAM's enquiry, the Chairman said that as the Bill was sponsored by Mr Paul CHAN, according to her understanding, it could not be proceeded should Mr CHAN cease to be a Legislative Council ("LegCo") Member before the resumption of its second reading.

(b) **Legal Service Division report on subsidiary legislation gazetted on 4 May 2012 and tabled in Council on 9 May 2012**
(LC Paper No. LS 60/11-12)

9. The Chairman said that a total of 14 items of subsidiary legislation (L.N. 73 to L.N 86), including five Commencement Notices, were gazetted on 4 May 2012 and tabled in the Council on 9 May 2012.

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10. Regarding the Lifts and Escalators (General) Regulation (L.N. 75) and the Lifts and Escalators (Fees) Regulation (L.N. 76), the Chairman said that L.N. 75 was to set out, among other things, the duties of responsible persons and registered persons and the procedural requirements relating to various applications to be made under the Lifts and Escalators Ordinance; and L.N. 76 was to prescribe the fees payable in respect of such applications. The two Regulations would come into operation on a day to be appointed by notice published in the Gazette.

11. The Chairman further said that the Administration had briefed the Panel on Development on 27 March 2012 on these two Regulations, and members had raised no objection. The Legal Service Division ("LSD") was still scrutinizing L.N. 75 and would provide a further report, if necessary.

12. Mr IP Wai-ming considered it necessary to form a subcommittee to study the two Regulations in detail. Members agreed. Mr IP Wai-ming agreed to join the subcommittee.

13. Regarding the Pesticide Residues in Food Regulation (L.N. 73), the Chairman said that it sought to regulate the level of pesticide residues in food. The Panel on Food Safety and Environmental Hygiene had been consulted on the legislative proposal on 12 July 2011 and members had raised no objection. LSD sought clarification on the definitions of two terms under the Regulation. The Regulation would come into operation on 1 August 2014.

14. Mr Fred LI considered it necessary to form a subcommittee to study the Regulation in detail. Members agreed. Mr Fred LI and Mr KAM Nai-wai agreed to join the subcommittee.

15. As regards the Securities and Futures (Futures Contracts) Notice 2012 (L.N. 81), the Chairman said that it sought to prescribe that any structured product set out in the Schedule to the Notice was to be regarded as a futures contract for the purposes of certain provisions of the Securities and Futures Ordinance (Cap. 571). The Panel on Financial Affairs had been consulted on the legislative proposal on 2 April 2012. Panel members had asked various questions in relation to over-the-counter derivatives transactions and the Administration had provided further information on such transactions. The Notice would come into operation on 27 June 2012.

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16. Mr James TO considered it necessary to form a subcommittee to study the Notice in detail. Members agreed. Mr James TO and Mr CHIM Pui-chung agreed to join the subcommittee.

17. Regarding the Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012 (L.N. 82), the Building (Inspection and Repair) Regulation (Commencement) Notice (L.N. 83) and the Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice (L.N. 84), the Chairman said that they sought to appoint 30 June 2012 as the day on which certain sections of the Buildings (Amendment) Ordinance 2011, and the whole of the Building (Inspection and Repair) Regulation and the Building (Minor Works) (Amendment) Regulation 2011 were to come into operation.

18. Mr KAM Nai-wai considered it necessary to form a subcommittee to study the three Commencement Notices in detail. Members agreed. Ms Audrey EU and Mr KAM Nai-wai agreed to join the subcommittee.

19. The Chairman said that the Secretariat would issue circulars to invite Members to join the four proposed subcommittees. Should less than three Members join any of these subcommittees by the deadline for signification of membership, the subcommittee concerned would not be formed in accordance with the House Rules. Members noted the arrangement.

20. Members did not raise any queries on the other seven items of subsidiary legislation (L.N. 74, L.N. 77 to L.N. 80, L.N. 85 and L.N. 86).

21. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 6 June 2012.

IV. Further business for the Council meeting of 16 May 2012

(a) Tabling of papers

Report No. 19/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 1931/11-12 issued vide LC Paper No. CB(3) 734/11-12 dated 10 May 2012)

22. The Chairman said that the Report covered four items of subsidiary legislation, the period for amendment of which would expire on 16 May 2012. No Member had indicated intention to speak on the subsidiary legislation.

23. Members noted the Report.

(b) **Members' motions**

Motion under Article 73(9) of the Basic Law which is jointly initiated by 23 Members and will be moved by Hon Cyd HO
(Wording of the motion issued vide LC Paper No. CB(3) 731/11-12 dated 8 May 2012.)

24. The Chairman said that the above motion, which was initiated jointly by 23 Members, sought to give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee to investigate the charges against the Chief Executive ("CE"), Mr Donald TSANG, of dereliction of duty.

25. Ms Audrey EU enquired about the order of business for the Council meeting of 16 May 2012.

26. The Chairman said that no bill had been scheduled for resumption of Second Reading debate at the Council meeting of 16 May. Subject to the progress of the Council meeting of 9 May, should the Committee Stage and Third Reading on the Legislative Council (Amendment) Bill 2012 ("LC(A) Bill 2012") not be completed at that Council meeting, the proceedings on that Bill would be resumed at the Council meeting of 16 May after questions had been transacted, followed by Government motions and Members' motions.

27. Ms Audrey EU enquired whether the Government motion to be moved under the Legal Aid Ordinance originally scheduled for the Council meeting of 2 May could be dealt with first should it be stood over to the Council meeting of 16 May.

28. The Chairman said that according to the Rules of Procedure, Government bills should be dealt with ahead of Government motions.

29. At the invitation of the Chairman, Secretary General ("SG") said that according to the order of business for a Council meeting, Government bills and motions would be dealt with first, to be followed by Members' motions with legislative effect, such as the one to be moved under Article 73(9) of the Basic Law in relation to the impeachment of CE, and then other Members' motions without legislative effect.

V. Business for the Council meeting of 23 May 2012

(a) Questions

(LC Paper No. CB(3) 729/11-12)

30. 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

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

(c) Government motion

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

(d) Members' motions

(i) Motion on "Building an inclusive society for all"

(Wording of the motion issued vide LC Paper No. CB(3) 739/11-12 dated 10 May 2012.)

(ii) Motion on "Perfecting urban management in all districts of Hong Kong"

(Wording of the motion issued vide LC Paper No. CB(3) 740/11-12 dated 10 May 2012.)

33. The Chairman said that the above motions would be moved by Mr LEUNG Yiu-chung and Prof Patrick LAU respectively, and the wording of the motions had been issued to Members.

34. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 16 May 2012.

VI. Report of Bills Committees and subcommittees

Report of the Bills Committee on Mediation Bill

(LC Paper No. CB(2) 1943/11-12)

35. Mr CHEUNG Kwok-che reported on behalf of Dr Margaret NG, Chairman of the Bills Committee, who was not able to attend the meeting. Mr CHEUNG said that the Bill sought to provide a regulatory

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framework for the development of mediation. The Bills Committee had held seven meetings to study the Bill and had received views from 32 organizations and individuals at one of the meetings.

36. Mr CHEUNG Kwok-che further said that the major issues discussed by the Bills Committee included accreditation and training of mediators; progress for setting up a single non-statutory industry-led mediation accrediting body for mediators; whether mediation conducted by the Financial Dispute Resolution Centre should be excluded from the application of the Bill; and safeguarding the confidentiality of mediation communication. He referred Members to the Bills Committee's report for details of its deliberations.

37. Mr CHEUNG Kwok-che added that in response to members' concerns, the Administration would move two Committee Stage amendments ("CSAs") to the Bill. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 23 May 2012.

38. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 14 May 2012.

VII. Position on Bills Committees and subcommittees
(*LC Paper No. CB(2) 1930/11-12*)

39. The Chairman said that there were 13 Bills Committees, 11 subcommittees under House Committee (i.e. six subcommittees on subsidiary legislation, two subcommittees on policy issues and three subcommittees on other Council business) and eight subcommittees under Panels in action.

40. Regarding the Subcommittee on International Organizations (Privileges and Immunities) (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction) Order, the Chairman said that Members had been informed via a circular dated 5 May 2012 issued by the Secretariat that as only one Member had signified to join the Subcommittee by the deadline for signification of membership, the Subcommittee could not be formed in accordance with the House Rules. Members noted.

VIII. Proposal of the Panel on Constitutional Affairs for setting up a subcommittee to study the proposed legislative amendments relating to the re-organization of the Government Secretariat

(Letter dated 9 May 2012 from the Chairman of the Panel on Constitutional Affairs to the Chairman of the House Committee (LC Paper No. CB(2) 1973/11-12(01)))

(Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs at the Council meeting of 20 June 2012 under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) (LC Paper No. CB(3) 735/11-12 dated 10 May 2012))

41. At the invitation of the Chairman, Mr TAM Yiu-chung, Chairman of the Panel on Constitutional Affairs ("CA Panel"), said that the CA Panel held a special meeting on 9 May 2012 to discuss the proposals of the re-organization of the Government Secretariat envisaged by the CE-elect. Members were informed at the meeting that to implement the new organization structure with effect from 1 July 2012, the current term Government had given notice on 8 May 2012 to move a resolution to effect the transfer of statutory functions at the Council meeting of 20 June 2012. The CA Panel therefore proposed that a subcommittee be set up under the House Committee to study the proposed legislative amendments relating to the re-organization of the Government Secretariat so that the scrutiny work could start early.

42. Ms Emily LAU agreed to the proposal to form a subcommittee to study the relevant legislative amendments. Referring to the chronology of events concerning the re-organization of the Government Secretariat in 2007 appended to the background brief prepared by the Secretariat for an earlier House Committee meeting (Appendix III to LC Paper No. CB(2)1818/11-12), she sought clarification on whether one or two resolutions would be moved by the Administration on the proposed re-organization of the Government Secretariat. She stressed that while the Administration intended to move the resolution at the Council meeting of 20 June, it should respect LegCo's procedure and move the resolution only after the proposed subcommittee had completed its scrutiny work. She sought confirmation on whether it was the normal practice for the Administration to withdraw the notice if the formation of a subcommittee was considered necessary.

43. At the invitation of the Chairman, SG clarified that as in the case of 2007, only one resolution would be moved by the Administration to effect the transfer of statutory functions of public officers arising from the proposed re-organization. SG further said that it was for the House Committee to decide whether the Administration should be requested to withdraw the notice for moving the resolution. As the requisite notice

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period for the moving of motions was 12 clear days, the Administration was normally be requested to withdraw the notice for the moving of a resolution on which a subcommittee had been formed by the House Committee because the scrutiny work could unlikely be completed within the short time frame. However, in the present case, in considering the need to request the Administration to withdraw the notice, Members might assess whether the proposed subcommittee could complete its scrutiny work before the moving of the resolution at the Council meeting of 20 June.

44. The Chairman said that unlike the normal cases, the Administration had given notice of more than one month for the moving of the resolution on the proposed re-organization of the Government Secretariat. Members could later consider the need to request the Administration to withdraw its notice having regard to the work progress of the proposed subcommittee.

45. Ms Emily LAU stressed that given the complexity of the matter, the large sum of public money involved and the wide public concern over the Accountability System for Principal Officials, the Administration should allow sufficient time for the subcommittee to scrutinize the legislative amendments concerning the proposed re-organization. She sought information on the Administration's timetable for submitting the staffing and financial proposals in connection with the re-organization to the Establishment Subcommittee ("ESC") and the Finance Committee ("FC") for approval.

46. At the invitation of the Chairman, SG said that she was given to understand from the Administration that it intended to submit the relevant proposals to ESC and FC on 6 and 15 June 2012 respectively.

47. Ms Emily LAU considered that the Administration should seek funding approval for the proposed re-organization after and not before the relevant resolution was passed.

48. Mr Albert CHAN said that he had raised a number of questions relating to the proposed re-organization, including housing supply. In his view, since the CE-elect had indicated that the proposed re-organization was necessary for the implementation of his policy platform, he should provide Members and the public with the rationale behind his re-organization proposals. Mr CHAN also considered it necessary for the Administration to provide the wording of the resolution to Members.

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49. The Chairman said that it was for the proposed subcommittee to consider Mr Albert CHAN's request for written information on the rationale for the proposed re-organization. The Chairman also clarified that the Administration had given notice for moving the proposed resolution at the Council meeting of 20 June, and the proposed resolution had already been issued to Members.

50. Mr LEE Wing-tat said that at the request of members of the Panel on Housing, an item had been added to the agenda of the Panel meeting to be held on 4 June 2012 on CE-elect's re-organization proposal in relation to the housing portfolio, and the Head of the CE-elect's Office ("H/CE-elect Office") would be invited to the meeting. However, according to his sources, H/CE-elect Office would attend the meetings of the CA Panel and the proposed subcommittee to study the legislative amendments but not the meeting of the Panel on Housing. He could not see the reason why H/CE-elect Office refused to attend the meeting of the Panel on Housing, given the great importance attached by the CE-elect to housing issues. Mr LEE sought information on the procedure for amending the proposed resolution to be moved by the Administration.

51. At the invitation of the Chairman, SG said that the normal procedure for amending motions would apply to the proposed resolution to be moved by the Administration.

52. Legal Adviser ("LA") supplemented that the proposed resolution would be moved under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), which provided that LegCo might by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer. The structure of the proposed resolution was similar to those of the resolutions concerning re-organization of Government Secretariat considered by LegCo in the past.

53. Mr LEE Wing-tat said that Members might propose amendments to the resolution to be moved by the Administration on the proposed re-organization. He enquired whether the proposed resolution had set out the relevant ordinances and post title of public officers to be affected by the transfer of statutory functions and the changes in policy responsibilities following the re-organization of the Government Secretariat.

54. The Chairman referred Members to the proposed resolution for details of the transfer of statutory functions arising from the proposed re-organization. She informed Members that should the proposed

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resolution be moved at the Council meeting of 20 June, the deadline for giving notice of amendments was 13 June, i.e. five clear days of notice.

55. In response to Mr LEE Wing-tat's further enquiry, LA said that the format for moving amendments to a motion with legislative effect was different from that for moving CSAs to a bill. LSD was ready to provide assistance to Members in this regard.

56. Mr KAM Nai-wai considered it illogical for the Administration to seek funding approval from LegCo for the proposed re-organization before the resolution was passed by LegCo. In his view, as Members might propose amendments to the resolution and there might be substantive changes to the re-organization proposals should the amendments be passed, it would make more sense for the staffing and funding proposals be considered by ESC and FC after the resolution had been passed.

57. At the invitation of the Chairman, SG said that in the re-organization of the Government Secretariat in 2007, the Administration also submitted the funding proposals to FC before the relevant resolution was passed by the Council. Members might raise this issue with the Administration should they wish to.

58. The Chairman said that as the relevant timetables were determined by the Administration, she suggested that Members could raise the concern with the Administration at meetings of the proposed subcommittee.

59. Mr KAM Nai-wai considered it necessary for the House Committee to convey Members' view to the Administration that the funding proposals should be submitted to LegCo after the resolution had been passed.

60. Mr CHEUNG Man-kwong said that as the resolution, if passed, should be the basis for the funding proposals, he shared the view that it was illogical for the Administration to submit the funding proposals to LegCo before the resolution was passed. In his view, as Members had identified a chronological loophole in the Administration's timetable for submitting the re-organization proposals to LegCo, the Chairman should raise the matter with the Administration with a view to rationalizing the chronology and procedure.

61. Mr Albert HO stressed that the Administration should not be allowed to upset the order of LegCo's procedure. He was concerned that it might set a bad precedent.

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62. The Chairman proposed to raise the matter with CS at their next meeting.

63. Ms Emily LAU requested the Chairman to also convey to CS that the Administration should respect the work of the subcommittee and move the proposed resolution at the Council meeting after the subcommittee had completed its work.

64. Members did not raise objection to the Chairman relaying these concerns to CS.

65. Members agreed to the proposal of the CA Panel for setting up a subcommittee under the House Committee to study the proposed legislative amendments relating to the re-organization of the Government Secretariat. The following Members agreed to join the subcommittee: Mr Albert HO, Ir Dr Raymond HO, Mr LEE Cheuk-yan, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr LEE Wing-tat, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Alan LEONG.

66. Ms Emily LAU said that the CA Panel had scheduled meetings in the following week to further discuss the re-organization proposals. She was concerned whether there would be any overlapping of work between the Panel and the newly formed subcommittee.

67. The Chairman said that the CA Panel had scheduled a special meeting on Tuesday, 15 May to continue its discussion on the re-organization proposals. It would also receive views from the public on the proposals at another special meeting scheduled for Saturday, 19 May. Given the time required for signification of membership and preparation for the first meeting of the newly formed subcommittee, the CA Panel would, in the meantime, continue to discuss the proposals at the two special meetings scheduled for the following week. According to her understanding, the work of the CA Panel would not overlap with that of the subcommittee.

68. Mr TAM Yiu-chung confirmed that the Chairman's understanding was correct. He said that after the subcommittee had commenced work, the CA Panel would not follow up on the matter.

69. There being no other business, the meeting ended at 3:12 pm.