

**立法會**  
***Legislative Council***

LC Paper No. CB(2)173/13-14

Ref : CB2/H/5/13

**House Committee of the Legislative Council**

**Minutes of the 3rd meeting  
held in Conference Room 1 of the Legislative Council Complex  
at 2:30 pm on Friday, 25 October 2013**

**Members present:**

Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon LEUNG Yiu-chung  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon CHAN Hak-kan, JP  
Hon CHAN Kin-por, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung

Hon Albert CHAN Wai-yip  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon Frankie YICK Chi-ming  
Hon WU Chi-wai, MH  
Hon YIU Si-wing  
Hon Gary FAN Kwok-wai  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHAN Yuen-han, SBS, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon SIN Chung-kai, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP  
Hon Tony TSE Wai-chuen

**Members absent:**

Dr Hon LAU Wong-fat, GBM, GBS, JP  
Hon Cyd HO Sau-lan  
Hon WONG Kwok-kin, BBS  
Dr Hon Elizabeth QUAT, JP

**Clerk in attendance :**

Miss Flora TAI

Clerk to the House Committee

**Staff in attendance :**

Mr Kenneth CHEN, SBS	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Justina LAM	Deputy Secretary General
Mr Andy LAU	Assistant Secretary General 1
Miss Odelia LEUNG	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General 4
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Ms Dora WAI	Principal Council Secretary 1
Mr Simon WONG	Head (Public Information)
Ms Amy YU	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr Bonny LOO	Assistant Legal Adviser 3
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Mr Jove CHAN	Senior Council Secretary (2)2
Miss Josephine SO	Senior Council Secretary (2)6
Miss Jasmine TAM	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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**I. Confirmation of the minutes of the 2nd meeting held on 18 October 2013**

*(LC Paper No. CB(2)117/13-14)*

The minutes were confirmed.

**II. Matters arising**

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

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2. The Chairman informed Members that CS had proposed to attend a special meeting of the House Committee ("HC") on Friday,

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8 November 2013, from 2:30 pm to 4:30 pm, to brief Members on the population policy consultation document and public engagement exercise. Members agreed.

### III. Business arising from previous Council meetings

(a) **Legal Service Division report on bill referred to the House Committee in accordance with Rule 54(4)**

**Air Pollution Control (Amendment) (No. 2) Bill 2013**  
(*LC Paper No. LS5/13-14*)

3. At the invitation of the Chairman, Legal Adviser ("LA") briefed Members on the report prepared by the Legal Service Division ("LSD") on the Bill. LA informed Members that LSD had written to the Administration to seek clarification on certain legal and drafting aspects of the Bill, and the Administration's reply was attached to the report.

4. Mr TANG Ka-piu considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr WU Chi-wai, Dr Kenneth CHAN and Mr TANG Ka-piu agreed to join the Bills Committee.

(b) **Legal Service Division report on subsidiary legislation gazetted on 18 October 2013 and tabled in Council on 23 October 2013**

(*LC Paper No. LS6/13-14*)

5. At the invitation of the Chairman, LA briefed Members on the LSD report on one item of subsidiary legislation (i.e. the Electronic Transactions (Exclusion) (Amendment) Order 2013) (L.N. 156) which was gazetted on 18 October 2013 and tabled in Council on 23 October 2013.

6. Members did not raise any questions on the Order.

7. The Chairman reminded Members that the deadline for amending the Order was 20 November 2013.

### IV. Further business for the Council meeting of 30 October 2013

**Members' motions**

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**Proposed resolution to be moved by Hon James TO under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1)**

- (a) **Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Guernsey) Order;**
- (b) **Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) Order; and**
- (c) **Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (State of Qatar) Order**  
*(Wording of the proposed resolution issued vide LC Paper No. CB(3)84/13-14 dated 24 October 2013.)*

8. The Chairman said that Mr James TO, Chairman of the subcommittee on the above three Orders, would move a proposed resolution at the Council meeting to extend the scrutiny period of the three Orders to 27 November 2013.

**V. Business for the Council meeting of 6 November 2013**

- (a) **Questions**  
*(LC Paper No. CB(3)76/13-14)*

9. The Chairman said that 22 questions (six oral and 16 written) had been scheduled for the meeting.

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

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

- (c) **Government motion**

**Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs under section 8 of the District Councils Ordinance (Cap. 547)**  
*(Wording of the proposed resolution issued vide LC Paper No. CB(3)83/13-14 dated 24 October 2013.)*

11. The Chairman said that the subcommittee on the above proposed resolution would report on its deliberations under agenda item VI(b) below.

(d) **Members' motions**

(i) **Motion under the Legislative Council (Powers and Privileges) Ordinance to be moved by Hon Charles Peter MOK**

*(Wording of the motion issued vide LC Paper No. CB(3)80/13-14 dated 23 October 2013.)*

(ii) **Motion to be moved by Hon James TO**

(iii) **Motion to be moved by Hon Albert CHAN**

12. The Chairman said that the subjects of the motions to be moved by Mr James TO and Mr Albert CHAN were "Domestic free television programme service licences" and "Imposing economic sanctions on the Philippines and restoring Hong Kong people's dignity" respectively. The wording of the motions had been issued to Members.

13. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above three motions was Wednesday, 30 October 2013.

Report of HC on Consideration of Subsidiary Legislation

14. The Chairman invited Members to note the list containing six items of subsidiary legislation tabled at the meeting (LC Paper No. CB(3)88/13-14), the period for amendment of which would expire on 6 November 2013. He reminded Members to indicate their intention by 5:00 pm on Tuesday, 29 October 2013 should they wish to speak on the subsidiary legislation.

**VI. Reports of Bills Committees and subcommittees**

(a) **Report of the Bills Committee on Merchant Shipping (Seafarers) (Amendment) Bill 2013**

*(LC Paper No. CB(1)69/13-14)*

15. On behalf of Mr WONG Kwok-kin, Chairman of the Bills Committee, Mr SIN Chung-kai briefed Members on the deliberations of the Bills Committee as detailed in its report. Mr SIN highlighted that the Bills Committee raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 6 November 2013 and agreed to the Committee stage amendments ("CSAs") to be moved by the Administration, which sought to respond to the views of members and improve the drafting of certain provisions of the Bill. The Bills Committee would not propose any CSAs to the Bill.

16. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 28 October 2013.

**(b) Report of the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2013**

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*(LC Paper No. CB(2)119/13-14)*

17. Mr IP Kwok-him, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. Mr IP highlighted that the Subcommittee had no objection to the proposals in the Order and supported the Administration giving fresh notice to move the proposed resolution at the Council meeting of 6 November 2013.

**(c) Report of the Subcommittee on Pilotage (Amendment) Regulation 2013 and Pilotage (Amendment) Ordinance 2013 (Commencement) Notice**

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18. Mr Frankie YICK, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. Mr YICK said that by virtue of section 5 of the Pilotage (Amendment) Ordinance 2013 ("the Amendment Ordinance"), a provision had been added to the Pilotage Ordinance (Cap. 84) to provide that an applicant for an exemption from compulsory pilotage must pay a prescribed fee where an officer of the Marine Department ("MD") had visited a ship for assessing the exemption application. The Commencement Notice sought to appoint 1 December 2013 as the day on which section 5 of the Amendment Ordinance came into operation, and the Amendment Regulation was to prescribe the fee payable by an applicant for exemption from compulsory pilotage for each visit made by an officer of MD.

19. Mr Frankie YICK further said that the Subcommittee had held one meeting with the Administration, during which the impact of the increase in the number of vessels visiting Hong Kong in recent years on the pilot manpower and the number of applications made for exemption from compulsory pilotage were discussed. The Subcommittee supported the two items of subsidiary legislation, and would not propose any amendments.

20. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the three items of subsidiary legislation studied by the above two Subcommittees was Wednesday, 30 October 2013.

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

*(LC Paper No. CB(2)118/13-14)*

21. The Chairman said that as at 24 October 2013, there are nine Bills Committees, 10 subcommittees under HC (i.e. seven subcommittees on subsidiary legislation, one subcommittee on policy issues and two subcommittees on other Council business) and seven subcommittees on policy issues under Panels in action. Four subcommittees on policy issues were on the waiting list.

## **VIII. Proposal to seek the Legislative Council's authorization to empower the Panel on Information Technology and Broadcasting to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance to order the Secretary for Commerce and Economic Development to attend before the Panel to produce all information relating to the vetting and approval by the Hong Kong Special Administrative Region Government of domestic free television programme service licence applications**

*(Joint letter dated 22 October 2013 from Hon Charles Peter MOK, Hon Cyd HO, Hon CHAN Chi-chuen, Hon Claudia MO, Hon LEUNG Kwok-hung, Hon Gary FAN, Hon SIN Chung-kai, Hon Frederick FUNG and Prof Hon Joseph LEE (LC Paper No. CB(2)132/13-14(01)))*

22. At the invitation of the Chairman, Mr Charles MOK said that he and eight other Members made the proposal having regard to the strong public demand for the Administration to clearly explain its decision to reject the application of Hong Kong Television Network Limited ("HKTVN") for a domestic free television programme service ("free TV") licence, as reflected in the huge turnout for the public procession on 20 October 2013. He criticized that the Administration had changed the rules of awarding applications which all along had been fair.

23. Mr Charles MOK said that the information to be sought from the Administration was not intended to include documents of the Executive Council ("ExCo") or other confidential commercial information, and that any confidential commercial information contained in the documents to be produced to the Legislative Council ("LegCo") could be redacted. Production of such documents by the Administration would not affect the proceedings of the pending judicial review application, as the information sought covered mainly the reports issued by the Communications Authority, the former Broadcasting Authority and the consultants, and not information relating to the decision-making process of ExCo. Mr MOK further said that even if such confidential



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information was contained in the relevant reports, they could be redacted before being produced to LegCo. He appealed to Members to support their proposal so that the relevant motion for invoking the powers of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") could be moved one week earlier at the Council meeting of 30 October 2013.

24. The Chairman informed Members that Mr Charles MOK had given notice to move a motion on the same matter at the Council meeting of 6 November 2013. Should HC support the proposal under discussion, the relevant motion would be moved by the HC Chairman instead at the Council meeting of 30 October 2013, subject to the President's permission to dispense with the requisite notice.

25. Mr Michael TIEN expressed doubt whether the proposed invocation of the powers under the P&P Ordinance could find out whether the Administration had changed its policy on issuance of free TV licences. He said that as Mr Ricky WONG, Chairman of HKTVN, had indicated his intention to seek judicial review, it would be more effective and practicable to leave the matter to the courts. While he considered it reasonable to request the Administration to provide the relevant consultancy reports to clarify public doubts over the matter, he was concerned that the scope of the information sought as set out in the proposed motion would cover records of ExCo and other sensitive information. Mr TIEN indicated that he had sought legal advice in this respect but it was not yet available. He would abstain from voting on the proposal.

26. Mr SIN Chung-kai said that given LegCo's responsibility to monitor the work of the Government, it was incumbent upon Members to find out whether the Administration had deviated from its policy in deciding on the grant of licences for free TV. The information proposed to be sought from the Administration would facilitate Members and the public to have a better understanding of the matter. Mr SIN added that based on LegCo's past experience in exercising the powers under the P&P Ordinance, it was a common practice of the Administration to redact, if necessary, sensitive information in the documents produced to LegCo.

27. Ms Claudia MO criticized the Administration for failing to clearly explain to the public the reasons for rejecting HKTVN's application for a free TV licence, and the lack of transparency in the vetting and approval process by ExCo. Quoting from articles published in Tai Kung Pao, Ms MO said that the Administration's decision on the applications for free TV licences had been criticized even by persons from the

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pro-establishment camp and there were allegations of conflict of interests of some ExCo members in the matter.

28. Ir Dr LO Wai-kyok said that Members belonging to the Business and Professional Alliance for Hong Kong ("BPAHK") supported the issuance of more free TV licences to introduce more competition into and enhance the standard of the trade. As the Administration's decision on the matter had clearly fallen short of public expectation, they considered that the Administration should give a detailed explanation to the public on the assessment criteria, the reasons for not granting a licence to HKTVN and whether there was any change in its policy, as well as making public the relevant documents including the four consultancy reports. Dr LO further said that the Administration had room to disclose more information in these aspects. Nevertheless, Members belonging to BPAHK considered it important that ExCo's established confidentiality rule should not be undermined. Given that the information to be sought from the Administration under the proposed motion included minutes of meetings and other records of ExCo, Members belonging to BPAHK did not support the proposal at this stage.

29. Mr CHAN Chi-chuen said that there was strong public demand on the Administration to give a clear explanation of the matter and Members were duty bound to exercise the powers conferred under the P&P Ordinance to order the production of all relevant information to find out the truth for the public.

30. Mr WONG Yuk-man, Chairman of the Panel on Information Technology and Broadcasting, informed Members that a special meeting of the Panel had been scheduled for 8 November 2013 to discuss issues relating to the applications for free TV licences. The Secretary for Commerce and Economic Development, the Chairman of the Communications Authority, Mr Ricky WONG as well as the Chairman of HKTVN Staff Union would attend the meeting. Mr WONG further said that ExCo's confidentiality rule should not be used as an excuse for opposing the proposal. Under the principle of separation of powers of the Legislature and the Judiciary, he could not see any reason why LegCo could not exercise the powers under the P&P Ordinance even though there was a pending judicial review. He was supportive of the proposal.

31. Mr James TIEN said that the Liberal Party was of the view that the Administration should issue free TV licences to all the three applicants. He had tried to get Members belonging to different political parties and groupings to sign a joint petition to urge the Government to issue three licences but was unsuccessful. Mr TIEN further said that Members

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belonging to the Liberal Party did not support the proposal as Mr Charles MOK had already given notice to move a motion on the same matter at the Council meeting of 6 November 2013. They considered that Mr MOK should not try to jump the queue and advance the motion debate to the Council meeting of 30 October 2013. Mr TIEN added that Members belonging to the Liberal Party were also concerned that the information sought to be produced included documents of ExCo and commercially sensitive information, given the wording of the motion, and they were considering moving amendments to the motion to be moved by Mr MOK at the Council meeting of 6 November to exclude such documents from the information to be sought.

32. Dr KWOK Ka-ki said that the Administration's change of policy during the process of vetting the applications for free TV licences had serious adverse impact on the business environment of Hong Kong. Members belonging to different political parties and groupings should work together to pressure the Government to provide a clear explanation of the matter to the public.

33. Ms Emily LAU said that the Administration's decision on the applications for free TV licences had infuriated the public. She noted that Members belonging to different political parties and groupings had expressed dissatisfaction with the Administration's handling of the matter. She hoped that all Members would work in concert and support both Mr James TIEN's initiative for a joint petition by Members and the proposal to invoke the powers under the P&P Ordinance to order the production of information.

34. Mr WU Chi-wai said that while some Members had expressed dissatisfaction with the Government's handling of the free TV licensing matter and considered it necessary for the Administration to provide more information, they were reluctant to support the proposal to invoke the powers under the P&P Ordinance to order the production of information. He further said that Members were failing to fulfil their duty to monitor the Government if they still allowed the Administration to use ExCo's confidentiality rule as a shield and evade its responsibility to answer the queries raised by the public on the matter.

35. Mr Albert CHAN said that Hong Kong lagged far behind other countries in terms of the number of TV licences granted. There had been little progress since the Administration announced its decision to open up the television market in 1998. Members should invoke the powers under the P&P Ordinance to do justice to the parties concerned and the public.

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36. Mrs Regina IP declared that she was an ExCo member and had taken part in ExCo's decision-making in respect of the applications for free TV licences. She sought advice from LA on whether there would be any conflict of interest or conflict of role for her to vote on the proposed motion.

37. At the invitation of the Chairman, LA said that the Rules of Procedure did not have any provisions governing conflict of role of Members and it was for individual Members to decide whether they should vote on a particular matter.

38. Mrs Regina IP further said that since all information relating to the vetting and approval of applications for free TV licences had been submitted to ExCo for consideration, the proposed motion, if supported, would inevitably pose challenge to the confidentiality of ExCo's proceedings which in her view should be upheld for the effective operation of ExCo. She therefore did not support the proposal.

39. Dr Helena WONG said that there was grave public concern about the matter as Hong Kong's core values were at stake. Many people expressed dissatisfaction that the Government had changed the policy and the assessment criteria during the vetting process. While some ExCo members had spoken publicly on the matter, the Administration had yet to give a clear official explanation for its decision not to grant a free TV licence to HKTVN. She stressed that the public had the right to know and expressed support for the proposed motion.

40. Mr LEE Cheuk-yan said that the public had the right to know and he did not understand why ExCo's confidentiality rule must be abided by in all circumstances. He also saw no reason why the former Broadcasting Authority's report on its recommendations on the free TV licence applications should be regarded as confidential. He pointed out that a select committee appointed by LegCo had ordered the production of documents of ExCo before. He considered that Members owed the public an explanation if they failed to exercise their powers under the P&P Ordinance to order the Administration to produce information relating to the matter.

41. Mr LEUNG Yiu-chung said that while the proposed invocation of the powers under the P&P Ordinance might violate ExCo's confidentiality rule, there was overwhelming public demand for the Administration to give a clear explanation on how it came to the decision of not granting a licence to HKTVN, as evidenced by the fact that more than a hundred thousand Hong Kong people had participated in the public procession on 20 October 2013.

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42. The Deputy Chairman said that he found it incomprehensible that some Members had expressed dissatisfaction with the Administration's decision on the matter on the one hand; but were unwilling to support the proposal for invoking the powers under the P&P Ordinance to ascertain the rationale for that decision on the other hand. He pointed out that the powers of LegCo to order the production of documents relating to the vetting and approval processes of free TV licence applications were comparable with those of the courts. If the court considered it necessary to order the production of ExCo documents, he saw no reason why LegCo could not do the same. He appealed to Members belonging to the pro-establishment camp to vote in favour of the proposal and not to act contrary to public opinion.

43. Prof Joseph LEE said that he was one of the nine Members who had jointly signed the letter proposing that a motion be moved at the Council meeting of 30 October 2013 to seek the Council's authorization to invoke the powers under the P&P Ordinance. He clarified that the purpose of the motion to order the Administration to produce all information relating to the vetting and approval of the free TV licence applications was to shed more light on the reasons behind the Chief Executive ("CE") in Council's decision not to grant a licence to HKTVN, and not to inquire into the relevant proceedings of ExCo. It was his understanding that the purpose of ExCo's confidentiality rule was to ensure that ExCo Members could, without pressure, speak freely and candidly in giving advice to CE. Not all documents submitted to ExCo should be covered under the confidentiality rule. He appealed to Members to support the proposal to defend the core values of Hong Kong.

44. Dr Fernando CHEUNG expressed support for the proposal. He considered that as significant public interests at stake, it was incumbent upon LegCo to fulfil its duty of monitoring the work of the Government by exercising the powers under the P&P Ordinance to find out whether priority had been accorded to commercial interests over public interests in the decision on free TV licences.

45. Mr MA Fung-kwok agreed that the Administration should clearly explain its decision on the matter to the public and he hoped that the Administration would seize the upcoming opportunities to do so. Mr MA expressed doubt whether the proposal which only sought to order the Administration to produce relevant information without examination of witnesses could help find out the truth. He was also concerned whether the Administration would produce the information sought when there were pending legal proceedings. Mr MA said that he might abstain from voting on the proposal.

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46. Mr Albert HO said that it was important that the Administration should not only be fair and impartial but also seen to be fair and impartial in the conduct of public affairs. There must be an adequate level of transparency and public monitoring in the process. When a decision made by the Administration affected the rights of an individual, the Administration was obliged to explain the reasons for its decision so that the individual would have the opportunity to make representation. ExCo's confidentiality rule should not be allowed to override these fundamental principles of public governance. He considered it necessary for the Administration to explain the rationale behind the decision of CE in Council on free TV licences and the request for production of information by the Administration was the first step in finding out the truth of the matter.

47. Mr Frederick FUNG said that it had been the Government's established policy that no limit was set on the number of free TV licences to be issued and any such licence application would be approved so long as the criteria set by the Government were fulfilled. He queried whether the Administration had changed its policy in rejecting the application of HKTVN. It was incumbent upon the Administration to explain clearly to the public the reasoning leading to the decision of CE in Council not to grant approval to all the three applications which had fulfilled the criteria set. As the Administration had failed to give a clear explanation and the remarks made by some ExCo members responding to public queries had only served to arouse further queries over the matter, he supported the proposal to invoke the powers under the P&P Ordinance to order the Administration to produce the specified information.

48. Mr Kenneth LEUNG said that many electors of the accountancy functional constituency had urged him to support the granting of all three free TV licence applications and request the Administration to explain the rationale behind the decision of CE in Council to reject the application submitted by HKTVN. On the view expressed by some Members belonging to the pro-establishment camp that the matter should best be left to the courts given that an application for judicial review had been filed, Mr LEUNG cautioned that the scope of documents which the Government would be required to provide in the judicial review might be even wider than that requested under the proposed motion. He further pointed out that as CE in Council was responsible for approving not only applications for free TV licences but also applications for other types of licences, the lack of a fair and transparent vetting and approval mechanism as revealed in the current case of free TV licence applications had seriously undermined the core values of Hong Kong as a free market economy.

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49. In response to Mr Kenneth LEUNG's enquiry on whether the Administration could refuse to produce the specified information to LegCo on the ground that a judicial review of the matter was underway, LA said that while there were no preconditions for LegCo or its committees to exercise the power under section 9 of the P&P Ordinance to order any person to attend before it to produce any paper, book, record or document in the possession or under the control of such person, section 14 of the P&P Ordinance provided that every person lawfully ordered to attend before LegCo or its committees should be entitled to the same right or privilege as before a court of law. Any requests for claiming such right or privilege would be dealt with by LegCo in accordance with its established procedures. It would be difficult to give a definitive answer in the absence of the specified facts of each case.

50. Mr NG Leung-sing believed that the Government had made its decision on the applications for free TV licences in accordance with the relevant law and procedure. He considered that as CE had already explained the relevant Government policy and procedure in handling the licence applications and a judicial review application had been filed, the matter should be left to the courts. He did not support the proposal.

51. Mr IP Kin-yuen said that the Administration was duty bound to explain its decision on the matter to the public. It was incumbent upon LegCo to hold the Administration accountable for its decision, and it would be irresponsible of LegCo not to follow up the matter and to leave it to the court to make a ruling, which could be a lengthy and time-consuming process. He appealed to Members to support the proposal.

52. Mr Alan LEONG said that he noted that no Member belonging to the pro-establishment camp had spoken in CE's defence on the matter. He further said that the vetting and approval of the free TV licence applications had not followed proper procedure and had seriously undermined the core values of Hong Kong as a free market. The reasons given by Members belonging to the pro-establishment camp for opposing the proposal were unconvincing, and their concerns could well be addressed by excluding all ExCo minutes and confidential commercial documents from the information sought under the proposal.

53. Mr TAM Yiu-chung said that although Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not support invoking the powers under the P&P Ordinance to order the Administration to produce information relating to the vetting and approval of the free TV licence applications, they considered it necessary for the Government to explain in more detail the rationale behind its

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decision and provide more information on the matter. Mr TAM further said that in view of the grave public concern, the Government should consider, on the premise of not affecting the conduct of the pending legal proceedings and not undermining the principles of collective responsibility and confidentiality of ExCo, making public as much information relating to the vetting and approval of the applications as possible.

54. Mr LEUNG Kwok-hung said that the Administration should not use the pending court case as an excuse for refusing to tell the truth. Given some Members' concern about ExCo's confidentiality rule, he suggested that Mr Charles MOK should consider amending the wording of the proposed motion to explicitly exclude ExCo minutes from the information sought, so as to gain more support.

55. Mr Martin LIAO said that the Administration's explanation on its decision of not granting a free TV licence to HKTVN was unsatisfactory, but as Mr Ricky WONG had decided to resort to judicial review, it would be more appropriate to leave the matter to the court, which had in place an established system for disclosure of documents. He queried whether the request of Mr Charles MOK and the other eight Members for mere disclosure of information could help achieve much. He opposed the proposal.

56. Dr LAM Tai-fai said that the Administration's decision on the free TV licence applications had caused a huge public uproar and CE's repeated refusals to provide a detailed explanation of the Administration's decision under the pretext of pending judicial review was most unacceptable to Hong Kong people. Dr LAM further said that Mr Ricky WONG however had not sought any assistance from LegCo and had indicated his intention to seek judicial review of the Administration's decision. Dr LAM sought advice from LA on whether LegCo's exercise of the powers under the P&P Ordinance might prejudice the judicial review.

57. At the invitation of the Chairman, LA said that under the legal system of Hong Kong, judicial review was a mechanism under which the courts were conferred with the powers to review the administrative decisions of public bodies and it was primarily concerned with the lawfulness of a decision. While the remedies available in proceedings for judicial review included granting of a quashing order or an injunction order and award of damages, judicial review was not an appeal mechanism for administrative decisions. LA further said that the judicial review mechanism and the exercise of the powers and functions provided under Article 73 of the Basic Law by LegCo were proceedings



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of different nature. It was for Members to decide whether it was appropriate to exercise the powers under P&P Ordinance when a judicial review application was underway. There were cases in the past where the subjects of inquiries of select committees appointed by LegCo involved matters related to pending legal proceedings, and where a select committee had ordered the production of documents of ExCo. These cases had been dealt with properly in accordance with the established practice of LegCo and relevant legal principles.

58. Dr LAM Tai-fai said that he was inclined to abstain from voting on the proposal.

59. Mr CHAN Kin-por said that as a motion on the same matter had been scheduled for the Council meeting of 6 November 2013, a debate would still be held even if the proposal was negatived at this HC meeting. As issues were often politicized when they were discussed in LegCo, he considered it more appropriate for the matter to be dealt with by the courts. He hoped that the Administration would explain the matter clearly to the public before the motion debate was held at the Council meeting of 6 November 2013.

60. Mr KWOK Wai-keung said that the Administration should, without undermining ExCo's confidentiality rule, disclose more information relating to the vetting and approval of the free TV licence applications, so as to clarify public doubts over the matter. Given the significant commercial interests involved, he did not consider it appropriate for LegCo to take up the matter. As Mr Ricky WONG had decided to seek judicial review of the matter, it should best be left to the courts.

61. Mr Charles MOK said that having considered the views expressed by Members at the meeting, he decided to amend the wording of the proposed motion by adding the words "but excluding all ExCo minutes and other confidential commercial documents" at the end of the proposed motion.

62. The Deputy Chairman said that it was not unlawful to disclose information about ExCo's deliberations and CE could grant permission for ExCo members to do so. It was up to CE to decide whether ExCo documents relevant to the vetting and approval of the domestic free TV licence applications could be provided to LegCo. He further said that the pending judicial review and the exercise by LegCo of the powers under the P&P Ordinance served different purposes and were not contradictory to each other. The former was to review the lawfulness of the Administration's decision in a particular case, while the latter focused on policy and systemic issues.

63. Mrs Regina IP said that while it was not unlawful to disclose ExCo documents, confidentiality and collective responsibility were long established fundamental principles governing the operation of ExCo. She was advised by the Secretary for Commerce and Economic Development that all the requested documents had been submitted to ExCo. Given that the disclosure of the relevant information would have significant implications on the governance of Hong Kong and commercial operations, she reiterated her opposition to the proposal.

64. In response to Dr LAM Tai-fai's enquiry, Mr Charles MOK clarified that his proposed amendments to the motion sought to explicitly exclude minutes of meetings, voting records and records of deliberations of ExCo on the matter, as well as other confidential commercial documents, from the information sought from the Administration.

65. The Chairman put to vote the proposal of Mr Charles MOK and eight other Members for the HC Chairman to move at the Council meeting of 30 October 2013 the following amended motion -

"本會根據《立法會(權力及特權)條例》(第382章)第9(2)條授權資訊科技及廣播事務委員會行使該條例第9(1)條所授予的權力，以命令商務及經濟發展局局長於2013年11月8日或以前，到資訊科技及廣播事務委員會席前，出示香港特別行政區政府在審批本地免費電視節目服務牌照申請的過程中所有相關的文據、簿冊、紀錄或文件(包括但不限於前廣播事務管理局向香港特別行政區政府所提交的所有相關文件及報告)，但不包括任何行會會議紀錄或涉及商業機密的文件。"

(Translation)

"That the Panel on Information Technology and Broadcasting be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance to order the Secretary for Commerce and Economic Development to attend before the Panel on Information Technology and Broadcasting on or before 8 November 2013 to produce all relevant papers, books, records or documents involved in the processes of vetting and approval of domestic free television programme service licence applications by the Hong Kong Special Administrative Region Government (including but not limited to all relevant documents and reports submitted by the former

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Broadcasting Authority to the Hong Kong Special Administrative Region Government), but excluding all Executive Council minutes and other confidential commercial documents."

The Chairman ordered a division.

66. Mr Tony TSE raised a point of order on whether Members should proceed to vote on the proposal, as the wording of the amended motion was different from that of the motion put to Members before the voting bell was rung.

67. At the invitation of the Chairman, Secretary General said that the wording of the amended motion had been read out by the Chairman and displayed on the wall screens in the conference room. Members were well aware of the amended motion proposed to be moved by the HC Chairman. He advised the Chairman that it was procedurally in order for the meeting to proceed with the division.

68. The Chairman considered it in order for the meeting to proceed with the division and asked Members to cast their votes.

The following Members voted in favour of the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Prof Joseph LEE, Mr Ronny TONG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.  
(27 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr IP Kwok-him, Mrs Regina IP, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok,

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Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE.  
(33 Members)

The following Member abstained from voting:

Mr MA Fung-kwok.  
(1 Member)

69. The Chairman declared that 27 Members voted for and 33 Members voted against the proposal and one Member abstained from voting. The Chairman declared that the proposal was negatived.

**IX. Any other business**

70. There being no other business, the meeting ended at 4:12 pm.

Council Business Division 2  
Legislative Council Secretariat  
31 October 2013