

立法會
Legislative Council

LC Paper No. CB(2)1437/13-14

Ref : CB2/H/5/13

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, 2 May 2014**

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
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, 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 Cyd HO Sau-lan
Hon Starry LEE Wai-king, 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 WONG Kwok-kin, BBS
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 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
Dr Hon Elizabeth QUAT, JP
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 Tony TSE Wai-chuen

Members absent:

Hon Abraham SHEK Lai-him, GBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon Dennis KWOK
Hon Christopher CHUNG Shu-kun, BBS, MH, 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
Miss Odelia LEUNG	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General 4
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Ms Dora WAI	Principal Council Secretary 1
Ms Emily PANG	Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Miss Carrie WONG	Assistant Legal Adviser 4
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Josephine SO	Senior Council Secretary (2)6
Miss Jasmine TAM	Senior Council Secretary (2)8
Miss Karen LAI	Council Secretary (2)6
Mr Ringo LEE	Senior Legislative Assistant (2)1
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

Action

I. Confirmation of the minutes of the 21st meeting held on 11 April 2014

(LC Paper No. CB(2)1387/13-14)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that CS had convened an urgent meeting with him on 17 April 2014 to express the Government's grave concern over the incident of Mr LEUNG Kwok-hung throwing objects at the Financial Secretary ("FS") at the Council meeting of 16 April 2014 and strongly

Action

request that appropriate follow-up actions be taken by the Legislative Council ("LegCo") to prevent similar disorderly behaviour in future. CS had also written to the President on the matter on 17 April 2014.

3. The Chairman further said that as the President had indicated in his reply letter to CS dated 28 April 2014, the Committee on Rules of Procedure had been examining the issue of repeated disorderly conduct of Members at Council meetings and would study the issue again at its meeting to be held on 13 May 2014. Regarding the view expressed by CS about the security arrangements inside the Chamber during the Council meetings, the matter would be followed up by The Legislative Council Commission. The Chairman added that the correspondence between CS and the President was issued to Members on 28 April 2014.

4. Mr LEUNG Kwok-hung said that he could have hit FS at the Council meeting had he wished to, but he would not do so. He therefore could not subscribe to CS' view that his behaviour at the Council meeting threatened the personal safety of public officers attending the meeting.

III. Business arising from previous Council meetings

(a) Legal Service Division reports on bills referred to the House Committee in accordance with Rule 54(4)

(i) Electoral Legislation (Miscellaneous Amendments) Bill 2014 *(LC Paper No. LS48/13-14)*

5. At the invitation of the Chairman, Legal Adviser ("LA") briefed Members on the report prepared by the Legal Service Division ("LSD") on the Bill.

6. Ms Cyd HO considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Ms Emily LAU (as advised by Mr SIN Chung-kai), Ms Cyd HO, Mr IP Kwok-him and Dr Kenneth CHAN.

(ii) Statute Law (Miscellaneous Provisions) Bill 2014 *(LC Paper No. LS44/13-14)*

7. At the invitation of the Chairman, LA briefed Members on the LSD report on the Bill.

Action

8. Mr SIN Chung-kai considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Mr James TO, Ms Emily LAU (as advised by Mr SIN Chung-kai), Mr Ronny TONG, and Ms Cyd HO.

(iii) Insurance Companies (Amendment) Bill 2014
(LC Paper No. LS50/13-14)

9. At the invitation of the Chairman, LA briefed Members on the LSD report on the Bill.

10. Mr CHAN Kin-por considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Mr James TO, Mr WONG Ting-kwong, Ms Cyd HO, Mr CHAN Kin-por, Mr KWOK Wai-keung and Mr SIN Chung-kai.

(iv) Electronic Health Record Sharing System Bill
(LC Paper No. LS47/13-14)

11. At the invitation of the Chairman, LA briefed Members on the LSD report on the Bill.

12. Mr SIN Chung-kai considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Mr WU Chi-wai, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Dr Helena WONG (as advised by Mr SIN Chung-kai) and Dr Elizabeth QUAT.

(v) Construction Workers Registration (Amendment) Bill 2014
(LC Paper No. LS46/13-14)

13. At the invitation of the Chairman, LA briefed Members on the LSD report on the Bill.

14. Ir Dr LO Wai-kwok considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Ms Cyd HO, Mr Alan LEONG, Mr SIN Chung-kai, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.

(b) Legal Service Division report on subsidiary legislation gazetted on 11 April 2014

(LC Paper No. LS45/13-14)

15. At the invitation of the Chairman, LA briefed Members on the LSD report on the six items of subsidiary legislation gazetted on 11 April 2014. LA pointed out that three of these items were made under the Road Traffic Ordinance (Cap. 374) (i.e. L.N. 48 to L.N. 50) and were tabled in Council on 16 April 2014. The remaining three were Regulations made under the United Nations Sanctions Ordinance (Cap. 537) ("UNSO") which were not required to be tabled in Council (i.e. L.N. 51 to L.N. 53).

16. Regarding the Road Traffic (Driving Licences) (Amendment) Regulation 2014 (L.N. 48), LA advised that LSD had written to the Administration to seek clarification in respect of the scope of the empowering provision of the Amendment Regulation and the Administration's reply had just been received. LSD was studying the reply and a further report would be made if necessary.

17. Members decided that the three Regulations made under UNSO be referred to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions as they came within the Subcommittee's terms of reference.

18. Members did not raise any questions on L.N. 48 to L.N. 50. The Chairman reminded Members that the deadline for amending these three items of subsidiary legislation was the Council meeting of 14 May 2014.

(c) Legal Service Division report on subsidiary legislation gazetted on 25 April 2014 and tabled in Council on 30 April 2014

(LC Paper No. LS49/13-14)

19. At the invitation of the Chairman, LA briefed Members on the LSD report on the four items of subsidiary legislation (i.e. L.N. 54 to L.N. 57) which were gazetted on 25 April 2014 and tabled in Council on 30 April 2014. LA informed Members that LSD had written to The Law Society of Hong Kong to enquire about certain issues relating to the Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 (L.N. 57). LSD had received and studied the reply from The Law Society of Hong Kong and no legal or drafting issues requiring follow-up had been identified.

20. Regarding the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order (L.N. 54), Mr Kenneth

Action

LEUNG considered it necessary to form a subcommittee to study the Order in detail. Members agreed. Mr James TO and Mr Kenneth LEUNG agreed to join the proposed subcommittee.

21. Members did not raise any questions on the other three items of subsidiary legislation.

22. The Chairman reminded Members that the deadline for amending the four items of subsidiary legislation was the Council meeting of 28 May 2014, or that of 18 June 2014 if extended by a resolution of the Council.

IV. Business for the Council meeting of 7 May 2014

(a) Tabling of papers

Report No. 17/13-14 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)1389/13-14 issued vide LC Paper No. CB(3)596/13-14 dated 28 April 2014)

23. The Chairman said that the Report covered two items of subsidiary legislation, the period for amendment of which would expire at the Council meeting of 7 May 2014. No Member had indicated intention to speak on these two items of subsidiary legislation.

(b) Questions

(LC Paper No. CB(3)590/13-14)

24. The Chairman informed Members that 16 written questions had been scheduled for the meeting.

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

(i) **Administration of Justice (Miscellaneous Provisions) Bill 2014**

(ii) **Property Management Services Bill**

(iii) **Inland Revenue (Amendment) Bill 2014**

25. The Chairman said that the Administration had given notices to introduce the above Bills into the Council on 7 May 2014.

(d) **Government motion**

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

(e) **Members' motions**

- (i) **Proposed resolution under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Pesticides Ordinance (Amendment of Schedule 1) Notice 2014 to be moved by Hon Cyd HO**
(Wording of the proposed resolution issued vide LC Paper No. CB(3)580/13-14 dated 25 April 2014)

27. The Chairman said that Ms Cyd HO, Chairman of the Subcommittee on the above Notice, had given notice to move a proposed resolution at the Council meeting to extend the scrutiny period of the Notice to the Council meeting of 28 May 2014.

- (ii) **Motion on "Report of the delegation of the Subcommittee on Poverty to study the experience of poverty alleviation in Taiwan and Japan" to be moved by Hon Frederick FUNG**
(Wording of the motion issued vide LC Paper No. CB(3)560/13-14 dated 17 April 2014)

- (iii) **Motion on "Ensuring the completion of public housing and infrastructure projects on schedule" to be moved by Hon James TIEN**
(Wording of the motion issued vide LC Paper No. CB(3)572/13-14 dated 23 April 2014)

28. The Chairman said that the above two Members' motions without legislative effect were scheduled to be moved at the Council meeting of 7 May 2014.

V. Business for the Council meeting of 14 May 2014

- (a) **Questions**
(LC Paper No. CB(3)589/13-14)

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

Action

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

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

(c) **Government motion**

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

(d) **Members' motions**

(i) **Motion under the Legislative Council (Powers and Privileges) Ordinance to be moved by Hon Gary FAN**
(Wording of the motion issued vide LC Paper No. CB(3)585/13-14 dated 25 April 2014)

(ii) **Motion on "The 4 June incident" to be moved by Hon LEE Cheuk-yan**
(Wording of the motion issued vide LC Paper No. CB(3)598/13-14 dated 29 April 2014)

(iii) **Motion on "Setting up a 'Future Fund' for establishing an integrated retirement protection system" to be moved by Hon WONG Kwok-kin**
(Wording of the motion issued vide LC Paper No. CB(3)603/13-14 dated 30 April 2014)

32. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above three motions was Wednesday, 7 May 2014.

Report of HC on Consideration of Subsidiary Legislation

33. The Chairman invited Members to note the list containing three items of subsidiary legislation tabled at the meeting (LC Paper No. CB(3)601/13-14), the period for amendment of which would expire at the Council meeting of 14 May 2014. He reminded Members to indicate their intention by 5:00 pm on Monday, 5 May 2014, should they wish to speak on any items of the subsidiary legislation.

VI. Report of Bills Committees and subcommittees

Report of the Subcommittee on Pesticides Ordinance (Amendment of Schedule 1) Notice 2014

34. Ms Cyd HO, Chairman of the Subcommittee, made a verbal report on the deliberations of the Subcommittee. Ms HO said that the Notice sought to add six pesticides, which had been ratified for inclusion by the Central People's Government ("CPG") in January 2014, to Schedule 1 to the Pesticides Ordinance (Cap. 133) to fully meet the requirements of the Stockholm Convention on Persistent Organic Pollutants. While members of the Subcommittee raised no objection to the legislative amendment proposal, they were of the view that to safeguard public health and safety, the Administration should have submitted the legislative amendments to LegCo earlier instead of waiting for the completion of ratification for inclusion of the six pesticides by CPG.

35. Ms Cyd HO further said that members of the Subcommittee also expressed concern about the safe and proper use of pesticides in schools and elderly care homes. They had requested the Food and Health Bureau to distribute the Codes of Practice for the trade on the safe use of pesticides to schools and elderly care homes through the Education Bureau as well as the Labour and Welfare Bureau. Ms HO added that the matter would be referred to the Panel on Food Safety and Environmental Hygiene for follow-up.

36. Ms Cyd HO informed Members that having considered the supplementary information provided by the Administration in response to members' request and the written views received, the Subcommittee agreed that it was not necessary to hold any further meeting. Ms HO added that pursuant to the earlier decision of the Subcommittee, she had given notice to move a proposed resolution at the Council meeting of 7 May 2014 to extend the scrutiny period of the Notice to the Council meeting of 28 May 2014.

37. Mr Albert CHAN said that he was a member of the Subcommittee. While the Subcommittee had completed its scrutiny work, the proposed extension of the scrutiny period of the Notice should continue to be proceeded with so as to allow more time for the public to give views on issues relating to the legislative amendment proposal.

38. The Chairman informed Members that if the proposed resolution for extending the scrutiny period of the Notice was passed at the Council meeting of 7 May 2014, the period for amending the Notice would be

Action

extended to the Council meeting of 28 May 2014 and the deadline for giving notice of amendments, if any, would be Wednesday, 21 May 2014; otherwise, the period for amending the Notice would expire at the Council meeting of 7 May 2014.

VII. Position on Bills Committees and subcommittees
(LC Paper No. CB(2)1388/13-14)

39. The Chairman said that as at 30 April 2014, there were eight Bills Committees, four subcommittees under the House Committee ("HC") and nine subcommittees on policy issues under Panels in action. Two subcommittees on policy issues were on the waiting list.

VIII. Proposals to seek the Council's authorization for the appointment of a select committee to inquire into the delay in the construction works of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link and related matters; and that in the performance of its duties the select committee be authorized to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance

(a) Letter from Hon Gary FAN

(Letters dated 16 and 30 April 2014 from Hon Gary FAN (LC Paper Nos. CB(2)1363/13-14(01) and CB(2)1421/13-14(01)))

(b) Letter from Hon WONG Yuk-man

(Letter dated 17 April 2014 from Hon WONG Yuk-man (LC Paper No. CB(2)1363/13-14(02)))

40. The Chairman said that Mr Gary FAN and Mr WONG Yuk-man wrote to him on 16 and 17 April 2014 respectively requesting discussion at this HC meeting of their proposals to seek the Council's authorization for the appointment of a select committee to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance ("the P&P Ordinance") to inquire into the delay in the construction works of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("the XRL project") and related matters. Mr Gary FAN further wrote to him on 30 April 2014 requesting deferral of the discussion of his proposal to the HC meeting on 9 May 2014, so as to enable Members to consider the accounts to be given by the MTR Corporation Limited ("MTRCL") and the Administration on the matter at the meeting of the Subcommittee on Matters Relating to Railways ("the Subcommittee") scheduled for 5 May 2014 before deciding on his proposal.

Action

41. At the invitation of the Chairman, Mr WONG Yuk-man said that he saw no reason why the discussion of his and Mr Gary FAN's proposals should be deferred to the next HC meeting on 9 May 2014. Mr WONG further said that even if the proposals were not supported by HC at this meeting, he did not see the need for Mr FAN to request HC to consider the matter again at the next meeting, given that Mr FAN had already given notice to move a motion to seek the Council's authorization at the Council meeting of 14 May 2014. Mr WONG considered that the proposals should be dealt with at this HC meeting.

42. Mr Albert CHAN said that to safeguard public interest, it was necessary to invoke the powers under the P&P Ordinance to inquire into the delay in the construction works of the XRL project as expeditiously as possible. He expressed support for dealing with the proposals of Mr WONG Yuk-man and Mr Gary FAN at this HC meeting.

43. Mr Gary FAN said that the delay in the construction and the likely cost overrun of the XRL project involved significant public interest. While MTRCL had announced the establishment of a committee to look into the matter, queries had been raised on the independence and credibility of the committee which was composed entirely of the directors of MTRCL. Given that confidential documents in relation to the XRL project disclosed by the media had revealed possible cover-up by MTRCL and the Administration, he considered it incumbent upon LegCo to effectively discharge its monitoring role through the appointment of a select committee to inquire into the matter.

44. Mr Gary FAN further said that while he had requested deferral of the discussion of his proposal to the next HC meeting on 9 May 2014 in the light of the wish expressed by some Members to be briefed on MTRCL's and the Administration's explanations at the meeting of the Subcommittee on 5 May 2014 before considering the proposed invocation of the powers under the P&P Ordinance to inquire into the matter, he also supported the consideration of Mr WONG Yuk-man's proposal at this HC meeting. However, in the event that HC did not support Mr WONG's proposal at this meeting, he hoped that his proposal would be considered at the next HC meeting.

45. The Chairman said that according to rule 24(n) of the House Rules ("HR"), the decisions of a committee should not be reopened for discussion unless with the permission of the committee. If the proposed invocation of the powers under the P&P Ordinance was not supported by members at this meeting, the request for discussing at the next HC meeting a proposal which was substantially the same as the one Members decided not to support would normally not be permitted, unless there were new developments and HC agreed to do so.

Action

46. Mr WU Chi-wai concurred with Mr WONG Yuk-man that the proposed invocation of the powers under the P&P Ordinance to inquire into the delay in the completion of the XRL project should be considered expeditiously at this HC meeting. Although the matter had been scheduled for discussion at the meeting of the Subcommittee on 5 May 2014, he did not expect that the documents to be provided by MTRCL and the Administration and their explanations at the meeting would clear the doubts surrounding the matter. In his view, invoking the powers under the P&P Ordinance to conduct a comprehensive inquiry into the matter in an open and transparent manner would be much more effective in finding out the truth of the matter.

47. Mr TANG Ka-piu declared that he was a shareholder of MTRCL. He said that Members belonging to the Hong Kong Federation of Trade Unions ("HKFTU") were of the view that the information to be provided by MTRCL and the Administration for the meeting of the Subcommittee was crucial to the consideration of whether it was necessary to invoke the powers under the P&P Ordinance to inquire into the matter, and that it was more appropriate to consider the need for LegCo to conduct the proposed inquiry after the matter had been thoroughly discussed by the Subcommittee. He added that Members belonging to HKFTU did not support the proposals at the present stage.

48. Mr LEUNG Kwok-hung considered it unacceptable that neither MTRCL nor the Administration had reported the problems relating to the XRL project to LegCo and it was not until the disclosure of the relevant internal documents of MTRCL by the media that the problems came to light. Given the failure of MTRCL and the Administration to provide timely and full reports on the progress of the XRL project and the alleged serious cost overrun of the project, he considered it necessary for LegCo to invoke the powers under the P&P Ordinance to conduct a full inquiry into the matter.

49. Ms Cyd HO said that the recent resignation of two senior executives of MTRCL who were in charge of the XRL project indicated that there were serious problems with MTRCL's implementation of the project. She considered it vital to ascertain whether the management of MTRCL and/or the Administration had been misinformed about the latest position of the XRL project by the project team or whether the management of MTRCL and/or the Administration had deliberately concealed the truth from the public. Should the proposed invocation of the powers under P&P Ordinance to inquire into the matter was not supported by Members at this HC meeting, she would consider Mr Gary FAN's request to discuss his proposal at the next HC meeting on 9 May 2014 justified, given that new information might emerge at the meeting of the Subcommittee.

50. Ms Claudia MO said that she was greatly disappointed by the recent disclosure of the delay in the construction and the possible cost overrun of the XRL project, which was a major public infrastructure in Hong Kong. She was convinced that there was a deliberate cover-up on the part of the management of MTRCL in respect of the actual position of the project. She therefore supported consideration at this HC meeting of the proposed invocation of the powers under the P&P Ordinance to inquire into the matter. She further said that if Members did not support the proposal at this meeting and if new information concerning the XRL project was available at the meeting of the Subcommittee, the Chairman should exercise discretion to allow the proposal to be reconsidered at the next HC meeting on 9 May 2014.

51. Dr KWOK Ka-ki criticized MTRCL and the Administration for repeatedly providing misleading information on the XRL project to the public and LegCo. Dr KWOK said that while the Subcommittee would discuss the latest position of the project at its meeting on 5 May 2014, he queried whether MTRCL and the Administration would be able to address all the concerns raised over the project within a two-hour meeting. He pointed out that the past inquiries conducted by LegCo proved that invoking the powers under the P&P Ordinance was the only effective means to put pressure on the parties involved to tell the whole truth about the matter under inquiry. He called on Members belonging to the pro-establishment camp to support invoking the powers under the P&P Ordinance to inquire into the matter and identify the parties who should be held responsible.

52. Mr CHAN Chi-chuen said that if the proposed invocation of the powers under the P&P Ordinance to inquire into the delay in the construction works of XRL was put to vote at this HC meeting, he expected that it would likely be not supported as many Members belonging to the pro-establishment camp would either vote against it or abstain from voting on the ground that they considered it necessary to take into account the information and explanations to be provided by MTRCL and the Administration at the meeting of the Subcommittee. In his view, if there was no new information or development on the matter following the Subcommittee's discussion with MTRCL and the Administration, it would be even more necessary for HC to consider the proposed invocation of the powers under the P&P Ordinance again at its next meeting on 9 May 2014, having regard to the Subcommittee's unsuccessful attempt to seek a full account of the matter from MTRCL and the Administration.

53. Mr Albert HO said that given the profound impact of the delay in the construction works of the XRL project and the huge amount of public funds involved, he saw no reason why LegCo should not conduct an inquiry into the matter. Mr HO further said that as the causes for the delay suggested by MTRCL were unconvincing, there was strong public demand for LegCo to find out the truth about the matter. He considered it ridiculous for MTRCL to engage its own directors to look into the matter, as they were the ones who should have closely monitored the progress of the XRL project.

54. Mr James TIEN said that Members belonging to the Liberal Party ("LP") were very disappointed with the delay in the construction and possible cost overrun of the XRL project. While LP Members were of the view that an investigation into the matter should be conducted, they considered it undesirable for the investigation to be conducted by the non-executive directors of MTRCL or by the Secretary for Transport and Housing ("STH"), as MTRCL and STH himself might be the subjects of inquiry. In LP's view, the Chief Executive should appoint an independent commission of inquiry chaired by a judge and comprising members from the related professions to conduct a full inquiry into the matter. Mr TIEN further said that while LP did not support invoking the powers under the P&P Ordinance to inquire into the matter at the current stage pending the response of MTRCL and the Administration at the meeting of the Subcommittee on 5 May 2014, LP would seriously consider giving support to the proposal if the Administration did not provide a clear way forward before 9 May 2014 in respect of how the delay would be investigated.

55. Ir Dr LO Wai-kwok said that as the representative of the engineering functional constituency in LegCo, he was gravely concerned about the delay in the construction works of the XRL project and agreed to the need to obtain more information on the causes for the delay, such as whether adequate site investigation had been conducted before commencement of the construction works and whether the complex geological ground conditions had rendered it difficult for the project team to complete the relevant works. He added that given that at present the public's prime concern was on how to minimize the delay and the overrun in the project cost as far as practicable, he considered it not necessary and inappropriate to invoke the powers under the P&P Ordinance to inquire into the matter at the current stage.

Action

56. Mr CHAN Han-pan said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") were deeply disappointed and dissatisfied with the delay in the construction works of the XRL project. They were of the view that while it was necessary to look into the matter to ascertain the causes of and the parties responsible for the delay, it would be more reasonable to first consider the explanations to be provided by MTRCL and the Administration at the meeting of the Subcommittee before considering whether to invoke the powers under the P&P Ordinance to inquire into the matter. Members belonging to DAB would therefore not support the proposed invocation of the powers under the P&P Ordinance at this HC meeting.

57. Mr Paul TSE said that there were some differences between the wording of the motion of Mr WONG Yuk-man and that of Mr Gary FAN. He pointed out that the scope of the inquiry proposed by Mr WONG was formulated in more general terms, whereas the inquiry proposed by Mr FAN was for finding out whether there had been any cover-up by MTRCL and whether there had been any deficiencies in the monitoring of the XRL project by the Administration and MTRCL. Mr TSE further said that it was premature and unfair for Members to decide whether to invoke the powers under the P&P Ordinance at the present stage before they had the opportunity to consider the explanations to be provided by MTRCL and the Administration at the meeting of the Subcommittee. He stressed that if the proposed invocation of the powers under the P&P Ordinance was put to vote at this HC meeting, Members who abstained from voting did so not necessarily because they were pro-establishment.

58. The Chairman reminded Members that abstention(s) would not be counted for the purpose of determining the result of a vote at HC meetings.

59. Mr WONG Kwok-hing said that he had participated in the visit of the Subcommittee to the construction site of the West Kowloon Terminus of XRL on 28 April 2014. Members had raised many questions during the site visit, but representatives of MTRCL only responded that a full account of the matter would be given at the meeting of the Subcommittee. He shared the view that it was more appropriate for Members to decide whether to invoke the powers under the P&P Ordinance after they had listened to the accounts to be given by MTRCL and the Administration at the meeting of the Subcommittee. If MTRCL and the Administration were not able to provide satisfactory explanations at that meeting, the Subcommittee could consider whether it should propose seeking the Council's authorization for the appointment of a select committee to exercise the powers under the P&P Ordinance to inquire into the matter.

Action

60. Mr Michael TIEN said that invoking the powers under the P&P Ordinance could not help to shorten the delay in the construction or reduce the cost overrun of the XRL project. He anticipated that the Subcommittee might need to convene further meetings to discuss the matter after the meeting on 5 May 2014. In his view, it would be more appropriate for Members to consider the need to invoke the powers under the P&P Ordinance to inquire into the matter only after the Subcommittee had completed its work in following up the matter.

61. Mr Tony TSE said that he had raised a written question on the progress of the XRL project at the Council meeting of 30 April 2014, and the Administration had stated in its reply that the issues raised by him would be covered in the accounts to be given by MTRCL and the Administration at the meeting of the Subcommittee on 5 May 2014. He shared the view that Members should first consider the documents to be provided by MTRCL and the Administration and their explanations to be given at the meeting of the Subcommittee before deciding on the need to invoke the powers under the P&P Ordinance or take other courses of actions to follow up the matter.

62. Mr Gary FAN stressed that as LegCo had approved the \$67 billion funding for the XRL project, Members were duty-bound to invoke the powers under the P&P Ordinance to inquire into the matter to hold the relevant parties accountable and to prevent similar incidents of delay and cost overrun of major infrastructure projects in the future. He had proposed to defer the discussion of his proposal to the HC meeting on 9 May 2014 so that Members belonging to the pro-establishment camp could not refuse to support the proposal on the ground that they needed to consider the MTRCL's report and the Administration's explanation to be made at the meeting of the Subcommittee.

63. Mr WONG Yuk-man said that he could not subscribe to Mr Michael TIEN's view that invoking the powers under the P&P Ordinance could not help to shorten the delay in the construction or reduce the cost overrun of the XRL project. Given the grave public concern and the substantial amount of public funds involved, LegCo should conduct an inquiry into the matter to hold the relevant parties accountable.

64. In response to Mr Paul TSE's enquiry, the Chairman clarified that the proposals of Mr Gary FAN and Mr WONG Yuk-man would be dealt with jointly at this HC meeting. He would put to vote the proposal to seek the Council's authorization for the appointment of a select committee to inquire into the delay in the construction works of the XRL project and related matters. If the proposal was supported by HC, a subcommittee could be formed to draw up the terms of reference of the proposed select

Action

committee and the wording of the proposed motion to be moved in Council.

65. Mr Gary FAN sought clarification whether his request for discussing his proposal at the next HC meeting would be acceded to if the proposed invocation of the powers under the P&P Ordinance to inquire into the matter was not supported at this HC meeting. Mr WONG Kwok-kin asked whether another Member could put forward a similar proposal for discussion at the next HC meeting.

66. The Chairman reiterated that such a request would be acceded to only if there was substantial difference between the proposal raised for discussion at the next HC meeting and that on which HC had taken a decision, or with the permission of HC as stipulated in HR 24(n).

67. The Chairman put to vote the proposal to seek the Council's authorization for the appointment of a select committee to inquire into the delay in the construction works of the XRL project and related matters; and that in the performance of its duties the select committee be authorized to exercise the powers under section 9(1) of the P&P Ordinance. Mr WONG Yuk-man requested a division.

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, Ms Cyd HO, 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, 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, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Michael TIEN, Mr James TIEN, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr

Action

CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE.

(34 Members)

The following Member abstained from voting:

Mr Paul TSE.

(1 Member)

68. The Chairman declared that 27 Members voted for the proposal and 34 Members voted against it, and one Member abstained from voting. The Chairman declared that the proposal was not supported.

IX. Proposal of Dr Hon Kenneth CHAN to seek the Council's authorization for the House Committee to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance to order the Secretary for Transport and Housing to attend before the House Committee to produce the full report of the investigation conducted by the Transport and Housing Bureau into staff conduct in the Marine Department in relation to the vessel collision incident near Lamma Island on 1 October 2012

(Letter dated 25 April 2014 from Dr Hon Kenneth CHAN (LC Paper No. CB(2)1399/13-14(01)))

69. Dr Kenneth CHAN said that families of the victims of the vessel collision incident near Lamma Island on 1 October 2012 ("the incident") had awaited the report of investigation by the Transport and Housing Bureau ("THB") into staff conduct in the Marine Department ("MD") in relation to the incident ("the Report") for a long time. However, instead of making public the full Report to enable the bereaved families and the public to know the truth about the incident including whether MD officers had been negligent in carrying out their duties, STH only released a short summary of the Report which failed to shed light on the matter. He considered it unacceptable for the Administration to deny the public of their right to know on the ground of avoiding the risk of the ongoing criminal investigation and any potential criminal proceedings being prejudiced. He stressed that the full Report should be made public and urged Members not to accept the arrangement of allowing LegCo Members to peruse the Report subject to their signing a confidentiality undertaking. He appealed to Members to support his proposal to invoke the powers under the P&P Ordinance to order STH to produce the full Report.

Action

70. Mr WONG Yuk-man said that it was totally unacceptable for the Administration to release a summary which was less than one-tenth in length of the some 430-page Report and which failed to shed light on whether any public officials should be held responsible for the incident. He considered that the reasons given by the Administration for refusing to disclose the Report, including protection of personal data privacy and avoiding the risk of prejudicing criminal investigation and potential criminal proceedings, were merely excuses. He added that to do justice to the deceased, it was necessary to put pressure on the Administration to make public the full Report.

71. Mr Michael TIEN said that while Members hoped to find out the truth for the purpose of preventing recurrence of similar incidents in the future, it was irresponsible for Members to request making public the full Report at this stage as it might prejudice the ongoing criminal investigation by the Police and any potential criminal proceedings in respect of the incident. In his view, it would be more appropriate for the Administration to arrange for the bereaved families to peruse the Report under a confidentiality agreement.

72. Mr WU Chi-wai considered it unjust to deny the bereaved families their right to peruse the full Report on the ground of avoiding the risk of prejudicing criminal investigation and any potential criminal proceedings. In his view, the Administration should explore other options, such as redaction of sensitive personal data before making public the Report. He appealed to Members to support Dr Kenneth CHAN's proposal.

73. Dr Fernando CHEUNG stressed that in discharging their official duties, public officers were answerable to the public. He did not see any problem with disclosing the ranks, respective acts of misconduct and the disciplinary actions to be taken against the MD officers concerned. He considered it absurd to use criminal investigation as the pretext for not disclosing such information to the public.

74. Ms Claudia MO criticized the Administration for failing to disclose details of the names and respective acts of misconduct of the officers concerned. She said that the Police should have completed its investigation as the incident occurred more than 18 months ago. She did not consider that avoiding the risk of prejudicing criminal investigation and subsequent criminal proceedings should be used to justify the Administration's refusal to disclose the full Report. In her view, it would be irresponsible on the part of Members not to take heed of the request and expectation of the families of the victims for making public the full Report. She also did not consider that allowing the bereaved families to peruse the full Report under a confidentiality undertaking was an appropriate arrangement.

Action

75. Mr LEE Cheuk-yan said that the Administration owed the victims and their families a duty to disclose the full details of the incident. LegCo should not allow the Administration to procrastinate the disclosure of the full Report on the ground of avoiding the risk of prejudicing potential criminal proceedings. He pointed out that LegCo had on past occasions invoked the powers under the P&P Ordinance to inquire into matters of public concern at the same time when criminal investigations into such matters were underway. Members should have confidence that, with the assistance and advice of LSD, they would be able to conduct an inquiry without jeopardizing the criminal investigation conducted in parallel by the Police and any subsequent criminal proceedings relating to the incident.

76. Mr James TIEN said that at its meeting on 28 April 2014, the Panel on Economic Development ("ED Panel") had passed a motion urging the Administration to submit the Report to LegCo for perusal by Members under a confidentiality agreement. He advised the meeting that the Administration had just responded that THB had been in active discussions with the Department of Justice ("DoJ") and the Civil Service Bureau on the feasibility of allowing Members as well as the bereaved families to peruse the Report subject to the signing of a confidentiality undertaking. DoJ would meet with the bereaved families on 15 May 2014 on the matter. Members belonging to LP considered it more appropriate for Members to defer the decision on Dr Kenneth CHAN's proposal until the Administration had made arrangement for Members and the bereaved families to peruse the Report. They therefore did not support Dr CHAN's proposal at the present stage.

77. Mr LEUNG Kwok-hung considered that the legal considerations provided by the Administration for not disclosing the Report were far from convincing. He added that it should be up to Members to decide whether to disclose the contents of the Report after their perusal.

78. Mr CHAN Kam-lam said that the motion passed at the ED Panel meeting on 28 April 2014 was moved by Mr SIN Chung-kai and Mr Dennis KWOK and amended by him. In his view, the arrangement for LegCo Members to peruse the Report under a confidentiality undertaking, as stated in the motion, could strike an appropriate balance among the various considerations including maintaining the integrity of the criminal investigation and any potential criminal proceedings as well as safeguarding the bereaved families' interest. He hoped that Members would respect the decision of the ED Panel.

Action

79. The Deputy Chairman said that the mere disclosure of facts and findings contained in an investigation report normally would not prejudice criminal investigation and proceedings. There might be a risk of prejudice only if conclusions involving suspected criminality drawn in the investigation report were also disclosed. Furthermore, the courts had on many occasions expressed the view that judges and juries, under the direction of judges, should be able to exercise their judgment independently without being influenced by media reports or discussions in the community. The Deputy Chairman further said that another option was to disclose the Report after redaction of those parts which contained conclusions or analyses on suspected criminal liabilities.

80. Mr LEUNG Yiu-chung said that the families of the victims had waited for a long time the findings of THB's investigation into the conduct of MD officers. He was dissatisfied with the Administration's procrastination in disclosing the full Report. He also criticized the Administration and some Members for using the risk of prejudicing potential criminal proceedings as the ground for not disclosing the full Report to the public. In his view, there should be no cause for concern in disclosing the full Report unless it contained false information.

81. Mr Alan LEONG said that the Director of Public Prosecutions had resorted to the same tactic some 18 months ago when DoJ applied for adjournment of the hearings by the Commission of Inquiry appointed to inquire into the collision of vessels near Lamma Island, on the ground of prejudicing possible criminal investigation and prosecution, but the application was dismissed by the Honourable Mr Justice Michael Victor LUNN. Mr LEONG further said that the time limit for representatives of the deceased and the injured to seek redress through civil actions was three years. As 18 months had already passed, it would be in the interest of the families of the victims to have the full Report disclosed as early as possible. Should Dr Kenneth CHAN's proposal be supported by HC, it would put pressure on the Administration to expeditiously make appropriate arrangements for disclosure of the Report. He appealed to Members to support Dr CHAN's proposal.

82. Mr James TO said that the majority of the bereaved families were of the view that the full Report should be made public and its disclosure should not be restricted to families of the victims, given the significant public interest involved. Citing the report compiled by the investigation panel led by Mr John STRICKLAND to probe into the causes and the accountability for the piling problems in two Home Ownership Scheme blocks in Yuen Chau Kok, Shatin in 2000 as an example, he said that there had been occasions where investigation reports on public officers' misconduct were made public. He hoped that Members would support the proposal of Dr Kenneth CHAN.

Action

83. Citing his experience in the work of the Public Accounts Committee ("PAC"), Mr Kenneth LEUNG said that he was not convinced that the risk of prejudicing criminal investigation was a valid ground for not disclosing the details of a matter which involved public interest. He found it unacceptable for the Administration to trim the 400-odd page Report down to a summary of only around 30 pages. In his view, arranging the bereaved families to peruse the Report under a confidentiality agreement would not serve any useful purpose. He did not see any problem in disclosing the Report if identifiable personal data of the officers under investigation were redacted. He expressed support for Dr Kenneth CHAN's proposal.

84. Ms Cyd HO considered that the disclosure of the Report would not affect the right of the officers concerned to a fair trial when criminal proceedings were initiated so long as the Report was drawn up on the basis of facts and objective findings. She agreed with the Deputy Chairman that a feasible arrangement was to have those parts of the Reports containing conclusions on suspected criminality redacted. Referring to the case of the collapse of the building at 45J Ma Tau Wai Road in January 2010 which involved criminal investigation and prosecution, she recalled that the full investigation report on that incident had been made public. She could not understand why the Administration refused to do so in the case under discussion.

85. Ms Emily LAU said that what the bereaved families wished most was to find out the truth about the incident in order to do justice to the deceased. She considered that LegCo should support the proposal for public disclosure of the full Report which only represented a small step to fulfil the wish of the bereaved families.

86. Ir Dr LO Wai-kwok said that while he fully understood the feelings and profound grief of the bereaved families, he saw no compelling reason for invoking the powers under the P&P Ordinance at this stage to order the disclosure of the full Report, as doing so might prejudice the Police's ongoing criminal investigation and the fair conduct of disciplinary actions to be taken against the officers concerned. In his view, THB and DoJ should be allowed more time to take appropriate steps to handle the matter. He therefore did not support Dr Kenneth CHAN's proposal at this stage.

87. Mr Paul TSE said that while he did not agree with the Director of Public Prosecutions' citing the case of *HKSAR v LEE Ming Tee And Another (FACC 8/2000)* to support his argument that disclosure of the Report might prejudice potential criminal proceedings in respect of the

Action

incident, he shared the view that a cautious approach should be adopted in handling the disclosure of the Report to avoid such risk. However, as its findings might have implications on the safety standards for vessels, the Report should be disclosed as early as possible in the interest of public safety after excision of those materials which might prejudice the criminal investigation and subsequent criminal proceedings.

88. Dr KWOK Ka-ki said that under the principle of separation of powers, LegCo had the responsibility to monitor the work of the Government. He pointed out that many matters considered by PAC involved ongoing criminal investigations and he did not subscribe to the arguments put forward by DoJ for not disclosing the full Report. He stressed that disclosure of the full Report could help reinforce public confidence in the Administration and the judicial system.

89. Dr Kenneth CHAN said that should his proposal not be supported by HC, he would still seek the President's permission for moving the proposed motion at a future Council meeting. Regarding some Members' suggestion that the Administration could disclose the Report after the excision of sensitive information, he drew Members' attention to paragraph 14 of the Administration's paper to the ED Panel which stated that redaction of the Report for public disclosure purpose was not practicable since the bulk of the Report would have to be redacted in order not to risk prejudicing the ongoing criminal investigation and any potential criminal proceedings. He considered it necessary to exert pressure on the Administration to disclose the full Report.

90. The Chairman put to vote the proposal of Dr Kenneth CHAN to seek the Council's authorization for HC to exercise the powers under section 9(1) of the P&P Ordinance to order STH to attend before HC to produce the full report of the investigation conducted by THB into staff conduct in MD in relation to the vessel collision incident near Lamma Island on 1 October 2012. The Deputy Chairman requested a division.

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, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Paul TSE, 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, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.

(27 Members)

Action

The following Members voted against the proposal:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr James TIEN, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE.
(30 Members)

The following Member abstained from voting:

Mr CHAN Kin-por.
(1 Member)

91. The Chairman declared that 27 Members voted for and 30 Members voted against the proposal, and one Member abstained from voting. The Chairman declared that the proposal was not supported.

X. Any other business

92. There being no other business, the meeting ended at 4:29 pm.