

立法會
Legislative Council

LC Paper No. CB(2)1510/13-14

Ref : CB2/H/5/13

House Committee of the Legislative Council

**Minutes of the 23rd meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 9 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 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 Cyd HO Sau-lan
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 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 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
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 Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen

Member absent:

Hon Emily LAU Wai-hing, 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
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Stephen LAM	Senior Assistant Legal Adviser 2
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 Bonny LOO	Assistant Legal Adviser 3
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Miss Evelyn LEE	Assistant Legal Adviser 10
Miss Josephine SO	Senior Council Secretary (2)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

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I. Confirmation of the minutes of the 22nd meeting held on 2 May 2014
(LC Paper No. CB(2)1437/13-14)

The minutes were confirmed.

II. Matters arising

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

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

Road Traffic (Driving Licences) (Amendment) Regulation 2014 (L.N. 48)

3. The Chairman said that at the last meeting of the House Committee ("HC"), Members noted that the Legal Service Division ("LSD") had written to the Administration to seek clarification in respect of the scope of the empowering provision for making the above Amendment Regulation. At the invitation of the Chairman, Legal Adviser ("LA") advised that LSD had studied the Administration's reply and no legal issues that required follow-up had been identified. A further written report would be provided for Members' reference.

III. Business arising from previous Council meetings

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

(a) Administration of Justice (Miscellaneous Provisions) Bill 2014
(LC Paper No. LS51/13-14)

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

5. Dr Priscilla LEUNG considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr Ronny TONG and Dr Priscilla LEUNG agreed to join the proposed Bills Committee.

(b) Property Management Services Bill
(LC Paper No. LS53/13-14)

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

7. 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: Mr Abraham SHEK (as advised by the Chairman), Ms Cyd HO, Mr Alan LEONG, Mr WU Chi-wai and Mr Tony TSE.

(c) Inland Revenue (Amendment) Bill 2014
(LC Paper No. LS52/13-14)

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

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9. Mr SIN Chung-kai considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr Kenneth LEUNG and Mr SIN Chung-kai agreed to join the proposed Bills Committee.

IV. Further business for the Council meeting of 14 May 2014

(a) Tabling of papers

Report No. 18/13-14 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2)1439/13-14 issued vide LC Paper No. CB(3)616/13-14 dated 5 May 2014)

10. The Chairman said that the Report covered three items of subsidiary legislation, the period for amendment of which would expire at the Council meeting of 14 May 2014. No Member had indicated intention to speak on these three items of subsidiary legislation.

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

Competition (Amendment) Bill 2014

11. The Chairman said that HC would consider the above Bill at its next meeting on 16 May 2014.

V. Business for the Council meeting of 21 May 2014

(a) Questions

(LC Paper No. CB(3)611/13-14)

12. 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

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

(c) Government motion

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

(d) **Members' motions**

(i) **Motion to be moved by Hon Michael TIEN**

(ii) **Motion to be moved by Hon Kenneth LEUNG**

15. The Chairman said that the subjects of the motions to be moved by Mr Michael TIEN and Mr Kenneth LEUNG were "Returning a happy childhood to students" and "Reorganising the Government's structure to improve its policy implementation" respectively. The wording of the motions had been issued to Members.

16. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 14 May 2014.

17. The Chairman further said that so far, four Members' motions without legislative effect had yet to be dealt with by the Council. Another four such motions had also been scheduled for the Council meetings of 14 and 21 May 2014. In the event that the debate on the Appropriation Bill 2014 had to stand over to these Council meetings, there would then be a backlog of eight Members' motions without legislative effect in total.

VI. The Chief Executive's Question and Answer Session on 22 May 2014

18. The Chairman said that the Chief Executive's Question and Answer Session would be held from 9:15 am to 10:45 am.

VII. Report of Bills Committees and subcommittees

Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2014

(LC Paper No. CB(1)1364/13-14)

19. Prof Joseph LEE, Chairman of the Bills Committee, briefed Members on the deliberations of the Bills Committee as detailed in its report. Members noted that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 21 May 2014.

20. The Chairman reminded Members that the deadline for giving notice of Committee stage amendments, if any, proposed to be moved to the Bill was Monday, 12 May 2014.

VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1438/13-14)

21. The Chairman said that as at 8 May 2014, there were 13 Bills Committees, five subcommittees under HC and nine subcommittees on policy issues under Panels in action. Two subcommittees on policy issues were on the waiting list.

IX. Requests for discussing proposals to seek the Council's authorization for the appointment of a select committee to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance 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

(a) Letter from Hon WU Chi-wai

(Letter dated 4 May 2014 from Hon WU Chi-wai (LC Paper No. CB(2)1449/13-14(01)))

(b) Letter from Hon Gary FAN

(Letter dated 5 May 2014 from Hon Gary FAN (LC Paper No. CB(2)1449/13-14(02)))

22. The Chairman said that Mr WU Chi-wai and Mr Gary FAN wrote to him on 4 and 5 May 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 section 9(1) of the Legislative Council (Powers and Privileges) Ordinance ("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. Given that the proposals raised by Mr WONG Yuk-man and Mr Gary FAN on the appointment of a select committee to inquire into the matter were not supported by Members at the last HC meeting, and that pursuant to rule 24(n) of the House Rules ("HR"), the decisions of HC should not be reopened for discussion unless with the permission of HC, HC should first consider whether to accede to the requests of Mr WU and Mr FAN for reopening discussion on the proposals at this meeting.

23. The Chairman further informed the meeting that Mr WU Chi-wai and Mr Gary FAN had also respectively written to the Chairman of the Subcommittee on Matters relating to Railways ("the Subcommittee") requesting to move motions at its meeting on 5 May 2014 for the Subcommittee to seek HC's support for the same proposals, but the

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motions had not been dealt with at that meeting as the Subcommittee had not yet completed its discussion on the matter. The Subcommittee would continue the relevant discussion at its meeting scheduled for 19 May 2014.

24. At the invitation of the Chairman, Mr WU Chi-wai said that the wording of Mr WONG Yuk-man's motion considered at the last HC meeting was formulated in more general terms, whereas his motion had set out specifically the scope of the proposed inquiry. As there was substantial difference between the wording of Mr WONG's motion and that of his motion, he hoped that Members would agree to discuss his proposal at this HC meeting. Mr WU further said that after the last HC meeting, new information had been provided by the MTR Corporation Limited ("MTRCL") and the Administration to the Subcommittee and further questions had been raised over the delay in the construction works of the XRL project and the management of MTRCL. In his view, the proposed invocation of the powers under the P&P Ordinance to conduct a comprehensive inquiry into the matter was the only effective means to find out the truth for the public.

25. At the invitation of the Chairman, Mr Gary FAN said that since the last HC meeting, there were various new developments concerning the matter. First, the Administration had announced the establishment of an expert panel of three members to be chaired by Professor LEE Chack-fan, who, however, decided to withdraw from the panel within hours of the announcement. Second, at the meeting of the Subcommittee, representatives of MTRCL and the Transport and Housing Bureau ("THB") apologized for not having communicated clearly with LegCo and the public on the project delay without offering any concrete proposals on how they would shoulder the responsibilities for the delay. Third, at MTRCL's Annual General Meeting on 8 May 2014, many shareholders of MTRCL expressed dissatisfaction with the various problems associated with the delay in the construction of the XRL project. Given these various new developments, he considered it necessary to discuss his proposal at this HC meeting. Mr FAN added that given the significant public interest involved, it was incumbent upon LegCo to conduct the proposed inquiry to find out the truth and hold the relevant parties responsible.

26. Dr KWOK Ka-ki said that the accounts given by MTRCL and the Administration at the meeting of the Subcommittee failed to address the various questions raised by Members on the matter, including whether and which government official(s) and/or senior staff member(s) of MTRCL should be held responsible. Dr KWOK further said that as MTRCL was the most important public transport service provider in

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Hong Kong, insufficient and ineffective monitoring of its work would pose serious risk to the public transport service in Hong Kong. Given that the alleged cover-up on the delay in the construction of the XRL project was a very serious matter, he considered it necessary to seek the Council's authorization for the appointment of a select committee to follow up the matter.

27. Mr WONG Yuk-man pointed out that even if HC decided not to reopen discussion of the proposals of Mr WU Chi-wai and Mr Gary FAN at this meeting, the proposed invocation of the powers under the P&P Ordinance would still be discussed in Council given that Mr FAN had already given notice to move a motion on the matter at the Council meeting of 14 May 2014. Nevertheless, he supported reopening discussion of the proposed invocation of the powers under the P&P Ordinance at this meeting, as the weight of the proposal would be enhanced if it was supported by HC.

28. Mr Albert CHAN expressed support for reopening discussion of the proposals to seek the Council's authorization for the appointment of a select committee to inquire into the matter. Mr CHAN said that the Administration and Members belonging to the pro-establishment camp were deploying a political tactic to divert the public's attention away from THB's responsibility for the matter by putting the blame on Mr Jay WALDER, Chief Executive Officer of MTRCL ("CEO/MTRCL"). He further said that the credibility of the investigation to be conducted by the committee set up by MTRCL, which was composed of its own directors, was open to question. He therefore considered it necessary for LegCo to appoint a select committee to exercise the powers under the P&P Ordinance to conduct the proposed inquiry to find out the truth about the matter.

29. Mr LEUNG Kwok-hung said that given the lack of credibility of the committee set up by MTRCL and the expert panel to be set up by the Administration, he considered it necessary for LegCo to conduct an inquiry into the matter to find out the truth about the matter and to hold the relevant parties responsible. He expressed support for reopening discussion on the matter.

30. Ms Claudia MO said that the accounts given by MTRCL and the Administration at the meeting of the Subcommittee had caused more concerns about whether there were further problems in relation to the XRL project that had been concealed from the public. While the Administration had been trying to put all the blame on MTRCL, as the major shareholder of MTRCL, the Administration could hardly avoid being responsible for the matter. In her view, the proposed inquiry

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should also cover issues of concern to the neighbouring residents who were affected by the construction works of the XRL project. She supported seeking the Council's authorization to appoint a select committee to exercise the powers under the P&P Ordinance to inquire into the matter.

31. Mr James TO said that the committee set up by MTRCL lacked credibility, as all its members were directors of MTRCL. There had been suggestion for the appointment by the Chief Executive of an independent commission of inquiry under the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the matter, but it was noted that MTRCL fell outside the scope of the inquiries provided under the Ordinance. Mr TO further said that he had written to the Chairman of the Subcommittee proposing that the Administration be requested to provide the minutes of meeting held by THB with the Highways Department and MTRCL on 21 November 2013 in relation to the construction and commissioning of the XRL project. While the Subcommittee had yet to receive the Administration's reply, the Administration had indicated to the media that since the meeting was convened in haste, detailed minutes of the meeting were not available. He also considered it absurd that Professor LEE Chack-fan, who had withdrawn from the expert panel established by the Administration in the light of his capacity as a non-executive director of a contractor for the XRL project, offered to recommend to the Administration potential candidates for the expert panel.

32. Mr Abraham SHEK declared that he was a non-executive director of MTRCL and one of the members of the committee set up by MTRCL to review the matter. He said that as non-executive directors of MTRCL, members of the committee had fiduciary duties to ensure that the interests of minority shareholders were protected and the committee would conduct the review independently and objectively. He added that he would not vote on the matter under discussion at this meeting.

33. Mr LEUNG Yiu-chung said that the investigation to be conducted by the committee of MTRCL sought only to review the management of the XRL project by MTRCL and would not shed light on the responsibility of the Administration for the matter. He was especially concerned about the Secretary for Transport and Housing's ("STH") remark that he had given MTRCL "the benefit of the doubt", which had given rise to further queries on the matter including the considerations of STH in accepting the advice of CEO/MTRCL. He considered it necessary to invoke the powers under the P&P Ordinance to conduct a comprehensive inquiry to ascertain the responsibilities of both MTRCL and individual government officials for the matter.

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34. Ir Dr LO Wai-kwok said that while there might have been some developments following the discussion of the proposed invocation of powers under the P&P Ordinance at the last HC meeting, he did not see that any new arguments had been put forward by Members for supporting or opposing the proposal. He considered it premature to conclude whether the committee of MTRCL and the expert panel to be set up by the Administration would be able to find out the truth about the matter, given that the committee and the expert panel had just commenced or was about to commence their work. He did not support reopening discussion on the proposals at this meeting.

35. Mr LEE Cheuk-yan said that much new information had emerged following the meeting of the Subcommittee. While MTRCL and the Administration had offered apologies to the public at the meeting, he considered it ridiculous that CEO/MTRCL attributed all the problems to poor communication. In his view, the accounts given by MTRCL and the Administration at the meeting had rendered it even more necessary to ascertain whether there was any cover-up on the part of the MTRCL and/or the Administration. He therefore supported invoking the powers under the P&P Ordinance to conduct a comprehensive inquiry into the matter.

36. Mrs Regina IP said that both MTRCL and the Administration had handled the delay in the construction works of the XRL project very poorly. However, given that the most urgent task at present was to ensure the completion of the XRL project as soon as practicable so as to avoid further delay and increase in project cost, and having regard to the concern that the conduct of the proposed inquiry by LegCo would affect MTRCL's implementation of the XRL project as well as other major railway projects, she did not support invoking the powers under the P&P Ordinance to inquire into the matter.

37. Mr Frederick FUNG considered it necessary to conduct the proposed inquiry to ascertain the causes for the delay in the construction works of the XRL project, including whether the Administration and MTRCL had made any wrong decisions in the process of taking forward the XRL project and whether proper site investigation had been conducted before the commencement of the construction works. Other issues of concern such as the communication problems raised by MTRCL, the giving of the benefit of the doubt by STH to MTRCL, and which parties should be held responsible should also be covered in the proposed inquiry.

38. Mr James TIEN said that Members belonging to the Liberal Party were of the view that given the new developments on the matter after the last HC meeting, including the information and explanations given by the Administration at the meeting of the Subcommittee on 5 May 2014 and the accounts given by the management of MTRCL at its Annual General Meeting on 8 May 2014, they supported the requests for reopening discussion at this HC meeting on the proposals for invoking the powers under the P&P Ordinance to inquire into the matter.

39. Mr TAM Yiu-chung considered it not necessary to reopen discussion on the proposed invocation of the powers under the P&P Ordinance for a number of reasons. First, the proposal had been thoroughly discussed and a decision had been taken by HC by way of a vote at the last meeting. Second, he did not think that Mr Gary FAN and Mr WU Chi-wai had advanced any new arguments to support their proposals. Third, it would set a bad precedent for HC to reopen discussion on a matter on which a decision had been made. Furthermore, Members would have the opportunity to further discuss the matter, as Mr FAN had given notice to move a motion to seek the Council's authorization at the Council meeting of 14 May 2014.

40. Dr Priscilla LEUNG said that she considered it unacceptable that CEO/MTRCL would not face any punishment by MTRCL and would merely not get his contract renewed for family reasons. In her view, CEO/MTRCL should be held responsible for the delay in the construction of the XRL project and MTRCL should enhance the transparency of the progress of the XRL project. Dr LEUNG further said that given the significant public interest involved in the delay of the XRL project, it was justified for LegCo to invoke the powers under the P&P Ordinance to inquire into the matter. However, she cautioned that the proposed inquiry might take a few years to complete, which might pose the risk of causing further delay in the implementation of the XRL project.

41. Dr Fernando CHEUNG said that he could not subscribe to the view of some Members belonging to the pro-establishment camp that they did not support invoking the powers under the P&P Ordinance to inquire into the matter on the ground that it would hinder MTRCL's implementation of the XRL project. He stressed that significant public interest was involved in the delay in the construction of the XRL project, and LegCo was duty-bound to conduct an inquiry into the matter to ascertain whether there was any negligence and deliberate cover-up on the part of MTRCL and the Administration.

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42. Mr Paul TSE said that the question under discussion was whether HC should give permission under HR 24(n) to reopen discussion on the proposed invocation of the powers under the P&P Ordinance on which a decision had been taken by HC at the last meeting. Mr TSE further said that in considering whether to accede to the requests for reopening discussion on the proposal, Members should have regard only to whether there were any new developments on the matter at the time when the requests were made on 4 and 5 May 2014, and not any subsequent developments. He further pointed out that when the proposed invocation of the powers under the P&P Ordinance was discussed at the last HC meeting, the majority of the Members who had voted against the proposal had expressly indicated that they considered it necessary to first consider the discussion of the matter by the Subcommittee before deciding on the need to invoke the powers under the P&P Ordinance. He considered that as the Subcommittee had yet to complete its work in following up the matter, it was not necessary to reopen discussion at this HC meeting on the proposed invocation of the powers under the P&P Ordinance to inquire into the matter.

43. Mr WONG Kwok-kin said that Members belonging to the Hong Kong Federation of Trade Unions ("HKFTU") shared the view that the respective responsibilities of MTRCL and the Administration for the delay in the construction of the XRL project had yet to be clarified. However, they also noted that even if the proposed invocation of the powers under the P&P Ordinance was supported by HC at this meeting, the Council's authorization had to be sought. As the Administration had been following up the matter and MTRCL would give a further account of the matter at the next meeting of the Subcommittee, Members belonging to HKFTU considered it more appropriate to take into account the ongoing developments before taking a final decision on the matter in Council. He added that HKFTU would not rule out the possibility of supporting the proposed invocation of the powers under the P&P Ordinance to inquire into the matter when the matter was debated in Council.

44. The Chairman put to vote the requests for reopening discussion on proposals to seek the Council's authorization for the appointment of a select committee to exercise the powers under section 9(1) of the P&P Ordinance to inquire into the delay in the construction works of the XRL project and related matters. Mr SIN Chung-kai requested a division.

The following Members voted in favour of the requests:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Mr Tommy CHEUNG, Mr Frederick FUNG, Prof Joseph

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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 James TIEN, Mr Frankie YICK, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG, Mr IP Kin-yuen and Mr CHUNG Kwok-pan.
(29 Members)

The following Members voted against the requests:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, 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 Paul TSE, Mr Michael TIEN, Mr Steven HO, 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 CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr Christopher CHUNG and Mr Tony TSE.
(31 Members)

The following Member abstained from voting:

Dr LAM Tai-fai.
(1 Member)

45. The Chairman declared that 29 Members voted for and 31 Members voted against the requests, and one Member abstained from voting. The Chairman declared that the requests were not supported.

- X. Proposal of Hon WONG Yuk-man to ask an urgent oral question under Rule 24(4) of the Rules of Procedure at the Council meeting of 14 May 2014 relating to the Police's use of pepper spray against Hon LEUNG Kwok-hung during the demonstration on 4 May 2014**
(Letter dated 5 May 2014 from Hon WONG Yuk-man (LC Paper No. CB(2)1449/13-14(03)))

46. Mr WONG Yuk-man said that during the demonstration against the XRL project on 4 May 2014, a police officer used pepper spray against Mr LEUNG Kwok-hung while other officers were holding him. In Mr WONG's view, it was extremely unreasonable for the Police to use pepper spray against Mr LEUNG under such circumstances. He was concerned

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that such act by the Police could threaten the personal safety of peaceful demonstrators, and considered it necessary for the Administration to explain the matter to Members and the public as soon as possible. He therefore proposed asking an urgent question on the matter under Rule 24(4) of the Rules of Procedure ("RoP") at the Council meeting of 14 May 2014. Mr WONG added that he had also written to the Chairman of the Panel on Security requesting discussion of the matter at the next Panel meeting, but his request had not been acceded to. He appealed to Members to support his proposal to ask an urgent oral question.

47. Mr James TO considered the Police's use of pepper spray against Mr LEUNG Kwok-hung at the demonstration unreasonable. He noted from media reports that the Police had also used pepper spray against another demonstrator at very close range and forcibly removed the plastic wrap or raincoat used by the demonstrator to protect against pepper spray. Given that many public meetings and public processions were expected to be held in the forthcoming months, he considered that LegCo should follow up the matter.

48. Mr LEUNG Kwok-hung considered that the Police had violated the guidelines on the use of pepper spray because the pepper spray was aimed at his face at very close range when he was not posing any threat to the safety of other people. He cautioned that such use of pepper spray by the Police might lead to confrontations between the Police and demonstrators in future public meetings and public processions. He added that it would be ridiculous if Mr WONG Yuk-man's proposal was not supported by HC but a complaint against the Police to be lodged by him was subsequently found substantiated by the Independent Police Complaints Council ("IPCC").

49. Mr WONG Kwok-kin said that while Mr LEUNG Kwok-hung had the right to seek redress from various channels such as IPCC and the LegCo Redress System, he did not see any urgency in asking the proposed question. He added that some members of the public might take a different view on the appropriateness of the Police's action.

50. Dr KWOK Ka-ki said that it was incumbent upon Members to request the Administration to explain the matter to the public, given that it concerned the personal safety of participants in public meetings and processions. He considered it unacceptable if some Members did not support Mr WONG Yuk-man's proposal merely because the matter involved Mr LEUNG Kwok-hung.

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51. Ms Claudia MO stressed that it was in the public interest to ask the proposed urgent oral question, as other demonstrators could be subject to the same treatment by the Police. She considered it necessary for Members to find out whether the Police had abused its power.

52. Mr LEE Cheuk-yan considered it inappropriate that the Police used pepper spray against Mr LEUNG Kwok-hung under the circumstances. In his view, it was obvious that the Police had abused its power in handling the demonstration on that day. He supported the asking of the proposed urgent oral question to safeguard Hong Kong people's right of demonstration.

53. Mr Kenneth LEUNG declared that he was a member of IPCC. Referring to the recent incident of a man shot dead by the Police in Lam Tin, he considered that there was urgency for Members to follow up the recent allegations of abusive use of force by the Police through the raising of the proposed urgent oral question. He pointed out that the Police General Orders ("PGO") and the Force Procedures Manual, which laid down the Police's internal enforcement guidelines, were not accessible by members of the public. He considered it necessary for the Administration to explain to the public how it applied those enforcement guidelines including when and how pepper spray should be used against demonstrators.

54. Mr LEUNG Yiu-chung said that many confrontations between the Police and demonstrators were triggered by the abuse of power by the Police in handling the demonstrations. He supported the asking of the proposed urgent oral question to convey a clear message to the Police that LegCo attached great importance to the matter.

55. Mr WU Chi-wai said that given the doubts in the community about the Police's use of pepper spray during the demonstration and as many public meetings and public processions would be conducted in the next few months, the Administration should explain to the public as soon as possible the basis on which the Police exercised its power and whether the way police officers used pepper spray against demonstrators on 4 May 2014 was in breach of PGO.

56. Dr Helena WONG declared that she was a member of IPCC. She said that while any parties who felt aggrieved by any Police action might make a formal complaint with the Complaints Against Police Office ("CAPO"), it might take one or two years for CAPO and IPCC to complete the investigation and review of a complaint case. As many large-scale public meetings and public processions were expected to take place in the next few months, she considered it necessary for the

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Administration to clarify as early as possible the guidelines governing the Police's use of pepper spray and whether the Police had the authority to deprive demonstrators of their right to protect themselves from pepper spray. She supported Mr WONG Yuk-man's proposal.

57. Dr Fernando CHEUNG said that apart from the way pepper spray was used against Mr LEUNG Kwok-hung during the demonstration, he also noted from media reports that some police officers even took off the raincoats of the demonstrators before spraying on them at very close range. He was worried that such acts of the Police might lead to further confrontations between the Police and demonstrators. In view of the many demonstrations to be held in the coming months, there was urgency for the Administration to explain the matter to the public.

58. Mr Gary FAN said that he was concerned about abuse of power by police officers in recent years and whether the Police had complied with the guidelines governing the use of pepper spray. He considered it necessary for LegCo to expeditiously follow up the matter, given that the matter involved the right of demonstrators and many large-scale public order events relating to constitutional reform would be conducted during this year. He supported Mr WONG Yuk-man's proposal.

59. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not support Mr WONG Yuk-man's proposal as they did not consider that the proposed oral question had satisfied the criteria stipulated in RoP 24(4), i.e. it was of an urgent character and related to a matter of public importance. He added that there were other channels, including IPCC, through which Mr LEUNG Kwok-hung could seek redress.

60. Mr CHAN Kin-por declared that he was one of the Vice-chairmen of IPCC. He said that he had just checked with the IPCC Secretariat that according to the latest annual report of IPCC, the average time required for IPCC to review a complaint case was about 100 days. In his view, it was more appropriate to deal with the matter through the existing mechanism.

61. Mr Paul TSE considered it important for Members to respect and abide by RoP. While he agreed that the matter was worth discussion, he queried whether there was urgency in raising the proposed question. The matter could be followed up by the relevant Panel, by moving a Member's motion at a Council meeting or the asking of a question in Council under the existing queuing mechanism. In view of the above considerations, he did not support Mr WONG Yuk-man's proposal.

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62. Mr WONG Yuk-man said that he put forward his request for asking an urgent question for HC's consideration in accordance with the relevant rules and procedure. He clarified that he put forward the proposal not to do justice to Mr LEUNG Kwok-hung but for the sake of public interest. He stressed that it was for the President to determine whether to give permission for the asking of the proposed question, irrespective of whether his proposal was supported by HC.

63. The Chairman put to vote the proposal of Mr WONG Yuk-man to ask an urgent oral question under RoP 24(4) at the Council meeting of 14 May 2014 relating to the Police's use of pepper spray against Mr LEUNG Kwok-hung during the demonstration on 4 May 2014. Mr WONG Ting-kwong 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, Mr Frederick FUNG, Prof Joseph LEE, Mr Ronny TONG, Ms Cyd HO, 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 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.

(25 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Mr NG Leung-sing, Mr Steven HO, 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, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr Christopher CHUNG and Mr Tony TSE.

(30 Members)

64. The Chairman declared that 25 Members voted for and 30 Members voted against the proposal, and no Member abstained from voting. The Chairman declared that the proposal was not supported.

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XI. Any other business

65. There being no other business, the meeting ended at 3:47 pm.

Council Business Division 2
Legislative Council Secretariat
15 May 2014