

立法會
Legislative Council

LC Paper No. CB(2)1883/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Tuesday, 24 March 2015, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon YIU Si-wing (Deputy Chairman)
Hon Cyd HO Sau-lan, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS

Members attending : Hon Paul TSE Wai-chun, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP

Members absent : Hon NG Leung-sing, SBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public Officers : Item IV
attending**

The Administration

Mr TSANG Tak-sing, GBS, JP
Secretary for Home Affairs

Mr Jack CHAN Jick-chi, JP
Director of Home Affairs (Acting)

Mr Franco KWOK Wai-fan, JP
Assistant Director of Home Affairs (4)

Item V

The Administration

Mr TSANG Tak-sing, GBS, JP
Secretary for Home Affairs

Mr Patrick LI Pak-chuen, JP
Deputy Director of Home Affairs (1)

Miss Cheryl CHOW Ho-kiu, JP
District Officer (Central and Western)
Home Affairs Department

Mrs Alice YU NG Ka-chun
Project Director 3
Architectural Services Department

Mr LI Ho-kin
Senior Project Co-ordination Manager
Architectural Services Department

Mr YIP Wing-shing, BBS, MH, JP
Chairman of Central and Western District Council

Mr CHAN Hok-fung, MH
Vice Chairman of Central and Western District Council

Mr Anthony LI Ping-wai, JP
District Officer (Islands)
Home Affairs Department

Ms Dilys CHEUNG Yuk-king
Chief Leisure Manager (New Territories West)
Leisure and Cultural Services Department

Ms Dora WONG Yee-sang
Chief Librarian (Operations and District Council Management)
Leisure and Cultural Services Department

Ms Elaine KWOK Lai-kuen
Senior Librarian (Islands)
Leisure and Cultural Services Department

Mr CHOW Yuk-tong, BBS, MH
Chairman of Islands District Council

Ms CHAU Chuen-heung, BBS, MH, JP
Vice Chairman of Islands District Council

Dr AU Chi-kin
Assistant Professor
Department of History, Hong Kong Shue Yan University

Mr YAU Kin-chung, JP
District Officer (North)
Home Affairs Department

Mr SO Sai-chi, SBS, MH
Chairman of North District Council

Item VI

The Administration

Mr TSANG Tak-sing, GBS, JP
Secretary for Home Affairs

Mr Laurie LO Chi-hong, JP
Deputy Secretary for Home Affairs (1)

Mrs Susanne WONG HO Wing-sze
Principal Assistant Secretary for Home Affairs (Civic Affairs) 3

Chinese Temples Committee

Mr Matthew WONG Wai-man
Secretary

Clerk in attendance : Ms Alice LEUNG
Chief Council Secretary (2) 2

Staff in attendance : Miss Josephine SO
Senior Council Secretary (2) 6

Miss Emma CHEUNG
Legislative Assistant (2) 2

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I. Confirmation of minutes
(LC Paper No. CB(2)961/14-15)

The minutes of the meeting held on 9 January 2015 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)851/14-15(01), CB(2)852/14-15(01),
CB(2)921/14-15(01), CB(2)970/14-15(01), CB(2)1030/14-15(01),
CB(2)1102/14-15(01) & (02) and CB(2)1124/14-15(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) Referral from Legislative Council ("LegCo") Members' meeting with Yau Tsim Mong District Council ("DC") members on 29 January 2015 on issues relating to guesthouse licensing and the Building Management Ordinance (Cap. 344);
- (b) Submission from Alliance for the Concern Over Columbarium Policy on the review of the Chinese Temples Ordinance (Cap. 153);
- (c) Letter dated 17 February 2015 from Dr Hon Helena WONG concerning the funding for and the governance of performing arts groups;
- (d) Administration's response to the letter dated 22 January 2015 from Dr Hon Kenneth CHAN on issues relating to the operation of the Hong Kong Army Cadets Association Limited;

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- (e) Referral from LegCo Members' meeting with Tuen Mun DC members on 22 January 2015 on issues relating to noise nuisances in parks managed by the Leisure and Cultural Services Department;
- (f) Letter dated 2 March 2015 from Hon Claudia MO expressing concerns about the Government's announcements in the public interest ("APIs");
- (g) Administration's response to the letter dated 2 March 2015 from Hon Claudia MO on APIs; and
- (h) Joint submission from three members of the public dated 20 March 2015 expressing concern about the governance of the Hong Kong Chinese Orchestra ("HKCO").

Matters relating to the funding for and governance of major performing arts groups ("MPAGs")

3. Referring to the joint submission mentioned above in paragraph 2(h), Dr Kenneth CHAN pointed out that it was issued jointly by three former principals of HKCO whose employment contracts were recently terminated by HKCO with immediate effect. As the matter related to the funding for and governance of HKCO which, in his view, were issues of great importance, he opined that the Panel should accede to the request of the three former staff members of HKCO to hold a meeting for discussion of HKCO's governance and management.

4. The Deputy Chairman and Mr Steven HO said that the matter raised in the joint submission was by nature a complaint about HKCO's internal management in respect of staff appointment. In their views, it would be more appropriate for the matter to be dealt with under the Redress System of LegCo.

5. Mr WU Chi-wai said that since the matter related to HKCO's governance, it was incumbent upon the Home Affairs Bureau ("HAB") to look into the matter, with a view to ascertaining whether the complainants' views/grievances over the staff management and appointment policies of HKCO were addressed. While he had no strong view on the proposal to hold a Panel meeting for discussion of HKCO's governance and management, he considered that HAB should examine the complaint in question with the three complainants and the management as well as the Council of HKCO.

6. The Chairman reminded members that Dr Kenneth CHAN had written in on 26 January 2015 expressing concerns over the governance of HKCO. At the request of the Panel, the Administration and HKCO had provided

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written responses to the issues and concerns raised in Dr CHAN's letter. She invited members to note the issues and concerns raised by Dr CHAN and the replies provided by the Administration and HKCO (issued vide LC Paper Nos. CB(2)752/14-15(01), CB(2)788/14-15(01) and (02) respectively).

7. Sharing similar concerns about the governance of HKCO and its use of public funds, Ms Claudia MO and Dr Helena WONG suggested the Panel to schedule a meeting to discuss the subject. Dr WONG added that she had raised such a request in her letter dated 17 February 2015 (LC Paper No. CB(2)921/14-15(01)).

8. Mr TANG Ka-piu said that the Panel should not discuss individual cases including the dispute in question which, in his view, should be resolved through arbitration or negotiation. He nevertheless considered it necessary for the Panel to follow up the matter from the policy perspectives. Ms Cyd HO suggested that the Panel should discuss the Government's subvention policy for MPAGs and monitoring of the performance of the nine MPAGs in complying with the requirements set out in the Funding and Services Agreements which HAB had entered into with each of the MPAGs, including governance and management issues.

9. In view of members' concerns about matters relating to the funding for and governance of MPAGs, the Chairman suggested and members agreed that the subject matter be included in the Panel's list of outstanding items for discussion.

Government's announcements in the public interest

10. Ms Claudia MO said that the Administration's response to her letter dated 2 March 2015 on Government's APIs as referred to in paragraph 2(g) above was far from acceptable. She requested that issues relating to the Administration's policy in the production and broadcasting of APIs be discussed by the Panel.

11. The Chairman said that, as the Administration had advised in its letter dated 19 March 2015 (LC Paper No. CB(2)1102/14-15(02)), the issues raised in Ms Claudia MO's letter were mainly related to the Broadcasting Ordinance (Cap. 562) and had been discussed by the Panel on Information Technology and Broadcasting before. Members noted and did not raise any views.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1045/14-15(01) and (02))

12. Members agreed to discuss the following two items at the next regular meeting scheduled for Friday, 10 April 2015, at 8:30 am -

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- (a) Educational and career development support for elite athletes; and
- (b) Signature Projects (Wong Tai Sin District Council, Sham Shui Po District Council, Tsuen Wan District Council and Sha Tin District Council).

IV. Outcome of the public consultation on the Administration's proposals to amend the Hotel and Guesthouse Accommodation Ordinance

(LC Paper Nos. CB(2)1045/14-15(03) and (04))

13. At the invitation of the Chairman, Secretary for Home Affairs ("SHA") briefed Members on the outcome of the public consultation conducted by the Administration on its proposals to amend the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO") as well as the proposed way forward, as set out in the Administration's paper.

Objective of the legislative proposals

14. Mr SIN Chung-kai and Mr WU Chi-wai said that people were now more open to the idea of sharing their house with strangers and foreigners, and offering their homes for rent by tourists. It was their understanding that some overseas cities, such as London and Singapore, had already adopted measures to facilitate the orderly development of "sharing economy". They enquired whether the Administration, in reviewing and proposing amendments to HAGAO, had considered issues relating to the fostering of "sharing economy" in Hong Kong.

15. In response, SHA and Director of Home Affairs (Acting) ("DHA(Atg)") advised that -

- (a) the primary objective of various measures proposed in the consultation document was to improve the licensing regime to minimize the nuisance and/or annoyance caused by licensed guesthouses to the local residents and to facilitate enforcement actions against unlicensed guesthouses;
- (b) as stipulated by HAGAO, any premises providing short-term sleeping accommodation at a fee should obtain a licence unless they were exempted by the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C), which provided general exemption to child care centres, bedspace apartments, elderly homes and those premises providing all

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accommodation with a tenancy period of 28 consecutive days or more for each letting;

- (c) if home sharing did not involve any money transactions, the Government might not have a role to regulate such acts. Even if people offered their homes for rent by tourists, it would fall outside the scope of HAGAO in the case where the tenancy period was more than 28 continuous days for each letting; and
- (d) as overseas experience had revealed that the business model of peer-to-peer accommodation under the concept of "sharing economy" might attract crimes or cause nuisance to the neighbourhood, the proposal of promoting "sharing economy" in Hong Kong needed to be studied before a policy decision could be taken.

16. Expressing support for the proposals to enhance the licensing regime for guesthouses, Mr LEUNG Che-cheung and Mr Steven HO considered that the Administration should study the feasibility of developing home-stay tourism in Hong Kong, and allow the conversion of "old village houses" in rural areas for use as premises for operating home-stay lodgings. They called on the Administration to consider introducing a new type of licence, in addition to the four different types of licences as set out in paragraph 17 of the Administration's paper, to provide for a less stringent licensing regime for home-stay lodgings.

17. Assistant Director of Home Affairs (4) ("ADHA(4)") responded that in accordance with the existing licensing mechanism, application for a hotel and guesthouse licence could be made for any New Territories Exempted House in the New Territories which complied with the requirements set out in the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) with a Certificate of Compliance or a letter of No Objection to Occupy issued by the District Lands Office, and complied with the lease conditions for residential purpose. Having regard to the design of village type houses in the New Territories and the unique rural environment, the Office of the Licensing Authority ("OLA") under the Home Affairs Department ("HAD") had all along been adopting a flexible and practical approach and had formulated basic building and fire safety requirements applicable to village type houses in the New Territories. Upon receipt of an application for licence, OLA would conduct site visit to inspect the premises and specify the applicable building structure and fire safety requirements for individual application. At present, around 120 holiday flats on outlying islands were licensed under the above arrangement. ADHA(4) added that according to the Administration's understanding, home-stay lodgings or similar tourist accommodation facilities in other jurisdictions were also required to comply with the building structure and fire safety requirements as

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prescribed in respective domestic legislations. Their requirements were comparable to those currently applicable to holiday flats in Hong Kong.

Enhancing the licensing regime

Provisions of the deed of mutual covenant ("DMC")

18. In response to Mr Paul TSE, SHA and DHA(Atg) explained that there was currently no clear provision in HAGAO to empower the Licensing Authority ("the Authority") to consider DMC during the process of considering an application for a guesthouse. The Administration now proposed to amend HAGAO, so that when DMC of the building concerned contained explicit restrictive provisions stipulating that guesthouse operations or commercial activities were not allowed in the building concerned, or the premises were for "private residential use" only, the Authority might refuse to issue/renew licences.

Local consultation

19. The Deputy Chairman considered it necessary for the Administration to specify clearly in the relevant amendment bill how the consultation exercise in respect of a particular licence application would be triggered, i.e. whether OLA should take the initiative to solicit residents' views on the application or only act on requests/complaints.

20. In response, DHA(Atg) advised that to allow time for the owners and the residents to study DMC of their buildings and consider the need for initiating appropriate actions with reference to the permitted uses stated therein, OLA had introduced a Notification System in April 2014. Under the system, OLA would issue letters to the owners' corporation ("OC"), residents' organization and/or property management company ("PMC") of the building concerned, as appropriate, to inform them that a licence application had been received and was being processed by OLA. For buildings without any OC or residents' organization and those which were not managed by any PMC, letters would be issued to all individual occupants of the buildings concerned. Before the application was approved, OLA would issue another round of letters to the parties concerned. The information was also uploaded onto OLA's website for public information. DHA(Atg) said that so far, the Notification System had worked well. OLA would continue to adopt the existing mechanism after the new licensing regime had come into effect.

Impact on the trade

21. While supporting the proposed amendments to HAGAO, the Chairman, the Deputy Chairman, Mr KWOK Wai-keung, Mr WU Chi-wai, Mr CHAN Chi-chuen and Dr CHIANG Lai-wan expressed concerns over the possible

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impact of the proposals on existing licensed guesthouses, in particular those operated in domestic buildings, DMC of which contained explicit restrictive provisions. They enquired whether specific measures would be adopted by the Administration to assist the affected operators to tide over the difficulties, e.g. identifying suitable premises for them to relocate and re-establish their business or allowing a longer transitional period to facilitate the affected operators to adapt to the new licensing requirements.

22. DHA(Atg) responded that according to the record of OLA, as at end of August 2014, there were 1 270 licensed guesthouses located in composite buildings, providing about 10 310 rooms in total. The Administration estimated that DMCs of some of these buildings, with about 280 licensed guesthouses providing about 2 000 guest rooms situated therein, might contain explicit restrictive provisions. However, since the licensees could relocate their guesthouses to other places which met the new licensing requirements to continue their operations, it was believed the proposed amendments would have limited impact on the trade. That said, the Administration was aware that the various proposals for enhancing the licensing regime for guesthouses and facilitating enforcement actions against unlicensed guesthouses might adversely affect existing guesthouse operators, in particular those who were operating guesthouses in buildings DMC of which contained explicit restrictive provisions. While the new licensing regime would come into effect for all new guesthouse applications, to allow more time for the above-mentioned operators to adapt to the new licensing regime and make necessary arrangements, such as relocation, they would be allowed to renew their existing licenses once, for a period of 12 months, after the commencement of the amendment bill on the basis of the existing licensing requirements. OLA would issue a special alert to the affected operators and advise them to take remedial actions as early as possible. Priority would also be given to processing their relocation applications. DHA(Atg) added that the Administration was considering publishing the names and addresses of the licensed guesthouses, in order to facilitate easy identification by tourists and the public.

23. Regarding some Members' suggestion that guesthouses should be allowed to operate in non-residential buildings, DHA(Atg) stressed that guesthouse operation was only allowed in domestic buildings or the domestic part of composite residential/commercial buildings.

24. Mr Paul TSE held the view that if the majority of residents/occupants of a building (e.g. more than 80% of them) did not object to the continued existence and operation of a particular guesthouse, the Administration should exercise discretion in enforcing the new licensing requirements concerning the licensee's compliance with the provisions in DMC, even if the relevant DMC contained explicit restrictive provisions. SHA said that the Administration would consider this suggestion of Members, in preparing the

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amendment bill for effecting the proposals for enhancing the licensing regime.

25. The Chairman urged the Administration to take into account Members' views and concerns and assist the trade to address their difficulties.

Facilitating enforcement actions against unlicensed guesthouses

26. In response to Mr Steven HO's concerns about the enforcement efforts/strategies of OLA to combat and eradicate unlicensed guesthouses, DHA(Atg) advised that -

- (a) to facilitate enforcement, the Administration proposed to add new provisions in HAGAO to the effect that when any premises were found to be offering or have provided short-term sleeping accommodation at a price without a valid licence, the owner, tenant or occupier of the premises concerned could be held liable. These provisions should effectively assist OLA in instigating prosecution against the owners and operators of the unlicensed guesthouses;
- (b) this apart, the Administration also proposed to make provision to allow OLA to apply to the court for search warrants to facilitate its enforcement officers to enter into, and break in if necessary, individual premises suspected of being used as unlicensed guesthouse for inspection and enforcement actions; and
- (c) in recent years, OLA had increased manpower resources and recruited frontline officers with law enforcement experience to carry out law enforcement related duties under HAGAO. OLA, at present, had about 40 full-time staff responsible for enforcement work.

27. Regarding the proposed inclusion of provisions in HAGAO to facilitate instigating prosecution against unlicensed guesthouses by circumstantial evidence, Mr KWOK Wai-keung said that there might be cases where the owners were absent from Hong Kong and had no knowledge that the tenants had used their premises as unlicensed guesthouses. He queried whether the Administration should hold these owners responsible for operating an unlicensed guesthouse, which was a criminal offence under HAGAO.

28. DHA(Atg) responded that the Administration proposed to introduce a new "strict liability" offence to HAGAO. The new provision would specify that any premises must not be used as a guesthouse without a valid licence. If there was sufficient evidence, circumstantial or otherwise, showing that any premises were used as unlicensed guesthouse, the owner, tenant or occupier of the premises concerned would be held liable. A statutory defence would be provided for innocent parties.

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29. Mr Paul TSE sought elaboration on what would amount to circumstantial evidence. DHA(Atg) responded that advertisements on the street or on the Internet, price lists, the layout and setting of the premises, etc. could be substantial circumstantial evidence to infer that the premises were being used as an unlicensed guesthouse.

Legislative timetable

30. Mr Steven HO enquired about the legislative timetable for the proposed amendments to HAGAO as set out in paragraph 14 of the Administration's paper. SHA advised that the Administration was working closely with the Department of Justice on the preparation of the legislative amendments and would introduce into LegCo the Hotel and Guesthouse Accommodation (Amendment) Bill as soon as possible within 2015.

V. Signature Projects (Central and Western District Council, Islands District Council and North District Council)
(LC Paper Nos. CB(2)1045/14-15(05) and (06))

31. As the item involved funding proposals, the Chairman reminded Members that in accordance with Rule 83A of the Rules of Procedure, they should disclose the nature of any direct or indirect pecuniary interests before they spoke.

32. At the invitation of the Chairman, SHA updated Members on the latest developments concerning the implementation of the Signature Project Scheme ("SPS"). Chairman of Central and Western DC ("Chairman/C&WDC"), Chairman of Islands DC, Vice Chairman of Islands DC ("Vice Chairman/IsDC") and Chairman of North DC ("Chairman/NDC") then took turns to brief Members on the following five proposed SPS projects

- (a) "Harbourfront Enhancement and Revitalization at the Western Wholesale Food Market" ("the HEAR Project") in C&W District;
- (b) "Yung Shue Wan Library cum Heritage and Cultural Showroom, Lamma Island", and "Improvement Works at Silvermine Bay Beach, Mui Wo, Lantau Island" ("the SMB Project") in the Islands District; and
- (c) "Improvement of Trails and Provision of Ancillary Facilities at Wu Tip Shan and Wa Mei Shan in Fanling" ("the Fanling Project"), and "Improvement of Trails and Provision of Facilities in Sha Tau Kok" in the North District.

Management and maintenance of district facilities built under SPS

33. Dr LAM Tai-fai noted from the cost estimates of some SPS projects that an annual recurrent expenditure was earmarked for implementing the project(s). Noting that the project estimates of some districts' SPS project(s) pitched at or were about to reach \$100 million, he asked whether the Administration would bear the additional costs for overruns and whether there would be any contingency plans for cost overrun.

34. In response, Deputy Director of Home Affairs (1) ("DDHA(1)") made the following points -

- (a) DCs, which took the lead in planning and implementing their SPS projects, might partner with non-profit-making organizations ("NPOs") or government departments to deliver their SPS projects. If a DC partnered with an NPO in operating and managing an SPS project, the NPO concerned should bear the recurrent consequences of the completed facilities. For other projects that would be operated and managed by government departments, the associated recurrent costs after commissioning of the projects would be provided by the Government;
- (b) for the majority of the SPS projects which were works in nature, pre-construction works including Technical Feasibility Studies and detailed design had to be completed prior to seeking funding approval from LegCo. Such pre-construction works would help make an assessment of the project estimates which were presented in money-of-the-day prices, taking into account inflation in construction cost. Besides, a contingency of about 10% of the cost of works and related items had also been reserved within the \$100 million earmarked for each district to cater for additional cost due to unforeseen circumstances during construction; and
- (c) other than the Government's one-off allocation of \$100 million earmarked for each district, DCs were most welcomed to inject donations they received for implementation of their SPS projects. Apart from NDC, Sha Tin DC, Yuen Long DC and Wan Chai DC had also received donations for their SPS projects.

35. Responding to the Chairman's enquiry about the party responsible for the operation and management of the SPS projects, DDHA(1) advised that depending on the nature of the completed SPS facilities, government departments would be in a better position to assume such responsibilities for some SPS projects. For example, the HEAR Project would be managed by the Leisure and Cultural Services Department. In that case, the estimates for

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the additional annual recurrent costs for the government departments concerned to undertake such duties would be worked out prudently in accordance with the established mechanism.

Implementation of SPS projects

36. Mr LEUNG Che-cheung and Mr TANG Ka-piu held the view that to make the best use of community wisdom in going for SPS, the Administration should consider increasing the resources to DCs to facilitate their implementation of larger scale and sustainable SPS projects. Echoing their views, the Deputy Chairman said that in the cases of C&WDC, IsDC and NDC, as the proposed SPS projects aimed at promoting local tourism, it was essential for the three DCs to have a stable and sustainable source of funding for organizing community involvement and publicity activities in order to upkeep the vibrancy of the completed facilities in the long run. He hoped that the Administration would consider providing a recurrent funding to DCs to pursue various publicity initiatives after the completion of the construction works.

37. Mr IP Kwok-him declared that he was a member of C&WDC and expressed strong support for the SPS projects proposed by C&WDC, IsDC and NDC. Noting that the Administration planned to submit the remaining SPS proposals in batches for the Panel's consideration between the second quarter of 2015 and the first quarter of 2016 and the next DC election would be held in November 2015, he and Dr LAM Tai-fai expressed concern that DCs of the new term commencing in January 2016 might have other views towards SPS. They called on the Administration to expedite the submission of the remaining SPS proposals to the Panel for consideration.

38. The Chairman and Mr TANG Ka-piu said that they were members of the Kowloon City DC ("KCDC") and IsDC respectively. They were equally concerned about the implementation progress of various SPS projects. In their view, it would be more desirable if funding approval for all the proposed SPS projects could be obtained and construction works commenced within the current DC term. Mr TANG was also of the view that the Administration should consider devolving more power to DCs with a view to enhancing their autonomy in finance and implementation of SPS projects.

39. In response, DDHA(1) advised that all the 18 DCs had agreed on their SPS project proposals. According to the latest progress, 20 out of the 27 SPS project proposals would have been submitted to this Panel before the end of the current legislative session. The remaining seven projects would be submitted to the Panel in the first quarter of 2016 because longer time was required to complete the necessary pre-construction works having regard to the unique circumstances of individual projects. For example, a heritage impact assessment had to be completed for KCDC's "Revitalization of the

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rear portion of the Cattle Depot" project as the proposed construction works would be carried out in a Grade II historic building site. A preliminary environmental review, followed by gazettal of the proposed works under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127), had to be completed on Sai Kung DC's "Reconstruction of the Sharp Island Pier" project as the proposed works would be close to the Sharp Island Special Area (Geopark) and a gazetted public beach nearby. The Administration would submit the remaining SPS proposals to the Panel for consideration in batches once they were ready.

40. In reply to Mr IP Kwok-him's enquiry about the mechanism put in place for monitoring the progress of SPS projects, DDHA(1) advised that -

- (a) most of the 18 DCs had either formed a dedicated committee/task force/working group or tasked an existing committee to oversee the formulation, planning, execution, promotion and public consultation, and other issues relating to the SPS project(s) of the respective districts. These committees/task forces/working groups would continue to monitor the progress of the projects following funding approval by the Finance Committee ("FC"); and
- (b) the HAD Headquarters and the relevant government departments would also monitor the performance of contractors in carrying out the construction works.

41. The Chairman asked whether the Administration had any plan to review the effectiveness of SPS. SHA responded that at present, the Administration was focusing on taking forward and expediting the implementation of various SPS projects in accordance with established procedures. Although a systematic review on SPS had yet to be conducted, feedbacks from DCs were generally positive. The Administration would bear in mind Members' views and suggestions, including the need to allow more flexibility in project planning, during its future review on the Scheme.

The HEAR Project

42. Dr CHIANG Lai-wan and the Deputy Chairman expressed support for the five SPS projects proposed respectively by C&WDC, IsDC and NDC, in particular, the HEAR Project as it aimed to open up and revitalize the waterfront area adjoining the Western Wholesale Food Market ("WWFM") for the entire community to enjoy, thereby realizing gradually the community's aspirations for a continuous and vibrant promenade in the district. Dr CHIANG suggested that consideration should be given to further developing the waterfront area into a "Fisherman's Wharf" so as to bring in business opportunities to the area. Echoing her view, the Deputy Chairman

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suggested that the WWFM waterfront open space could be utilized for commercial, leisure and tourism uses such as the launching of carnival activities or operation of alfresco dining/open café.

43. District Officer (Central and Western) and Vice Chairman/C&WDC responded that -

- (a) at present, while WWFM operated round-the-clock and was restricted to market operators, the waterfront area, especially the four adjoining piers, were left idle for most time of the day due to decreasing sea arrivals. Against this background, C&WDC proposed to undertake the HEAR Project in a bid to open up and revitalize the WWFM waterfront as a public open space for the entire community to enjoy; and
- (b) the future WWFM waterfront open space would include facilities such as open plaza, fishing area and light refreshment kiosk to offer diversified leisure experience. To boost vibrancy of the open space, C&WDC also proposed to organize community involvement and publicity activities such as weekend market and arts, cultural, leisure and recreational programmes.

The Fanling Project

44. In response to Mr LEUNG Che-cheung's enquiry, Chairman/NDC advised that Wu Tip Shan and Wa Mei Shan ("the project areas") were widely regarded as the green lungs of the urban part of Fanling in the North District which provided suitable habitats for birds and butterflies. The Fanling Project would help realize the potentials of the project areas and promote the development of eco-tourism in the district. To enhance public awareness of nature conservation, the project scope would be featured with educational elements. For example, directional signs and artificial specimens of interesting species found within the project areas would be installed at appropriate locations to display information on the species.

The SMB Project

45. Mr MA Fung-kwok said that he was supportive of the five SPS proposals under discussion. Pointing out the tourism potential of Mui Wo in light of its beautiful natural environment, he opined that the area should be further developed and entertainment or sports events should be organized, so as to attract more tourists to Mui Wo. He enquired whether IsDC had any further plans to enhance the attractiveness of Mui Wo.

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46. Vice Chairman/IsDC responded that apart from the Silvermine Bay Music Festival, various activities such as sand sculpture competition, weekend market, etc. had been held at the SMB Beach. However, the existing facilities on the beach, which were rather dated and aged now, were inadequate to serve the large number of visitors during such major events. Against this background, IsDC proposed to undertake the SMB Project in a bid to help rejuvenate the SMB Beach and boost the number of visitors to Mui Wo. After completion of the SMB Project, the beach facilities would be significantly enhanced. IsDC would collaborate with local/district organizations to organize community activities in Mui Wo.

Summing up

47. The Chairman urged the Administration to take note of Members' views and concerns expressed on the subject and consider them seriously when it reviewed the adequacy as well as effectiveness of the one-off allocation of \$100 million for each of the 18 DCs to initiate SPS projects and the way forward for SPS.

48. In concluding the discussion, the Chairman said that Members supported the five SPS projects proposed respectively by C&WDC, IsDC and NDC and raised no objection to the Administration submitting the proposals to the Public Works Subcommittee and FC.

VI. Review of the Chinese Temples Ordinance

(LC Paper Nos. CB(2)1045/14-15(07) and (08))

49. At the invitation of the Chairman, SHA briefed Members on the outcome of the review on the Chinese Temples Ordinance (Cap. 153) ("CTO") and the proposed amendments to CTO by HAB and the Chinese Temples Committee ("CTC"), as set out in the Administration's paper.

Purpose of the proposed amendments

50. Mr IP Kwok-him and Mr Paul TSE enquired about the purpose of the review on and proposed amendments to CTO. In response, SHA advised that CTO was enacted in 1928 against the rampant activities of deceitful pseudo-religious establishments. With the passage of time, some of its provisions appeared to be outdated in the present-day context and were vulnerable to legal challenges. SHA in particular pointed out that the provision in CTO which stipulated that the revenues, funds, investments and properties of all Chinese temples should be under the absolute control of CTC (section 7(1)) might not be consistent with Article 141 of the Basic Law which stipulated that "the Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief,

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interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region". For this reason, after a comprehensive review of CTO in consultation with CTC, the Administration recommended a number of amendments to CTO with a view to better serving prevailing social needs having regard to present circumstances.

Proposed voluntary registration scheme

51. Dr Kenneth CHAN said that he had all along been concerned about issues relating to the management of Chinese temples. While there was an increasing trend of Chinese temples engaging in non-religious and profit-making activities such as the operation of private columbaria, he considered it difficult to accept the proposed amendments to CTO, in particular, the replacement of the mandatory registration requirement with a voluntary registration scheme. Questioning whether the Administration was shirking its regulatory responsibilities over Chinese temples under the pretext of upholding religious freedom in implementing the proposed voluntary registration scheme, he and Mr CHAN Chi-chuen asked about the rationale behind the proposal.

52. SHA clarified that CTO was not intended to regulate privately-run columbaria. Pointing out that regulating columbaria business and establishing a more reasonable regulatory regime for Chinese temples under CTO were two separate matters, he advised that the Food and Health Bureau had proposed a licensing scheme for private columbaria under the Private Columbaria Bill, which had been introduced into LegCo and was being scrutinized by the relevant Bills Committee. SHA added that the proposed registration scheme was voluntary in nature, aiming at enhancing the transparency of the management of temples, including their handling of public donations. In view of public concerns over the transparency of charity donations in recent years, Chinese temples could gain public confidence through the registration scheme. In the event that any temple acted in contravention to any other relevant ordinances (such as on issues relating to the handling of public donations or temple safety), the relevant government departments would follow up on the matters and take prosecution actions as and where appropriate.

53. Deputy Secretary for Home Affairs (1) ("DSHA(1)") supplemented that CTO was enacted in 1928 according to the needs at that time, mainly against the rampant activities of deceitful pseudo-religious establishments. Compared with the state of the society in the 1920s, members of the public nowadays had a much better understanding of the risks associated with pseudo-religious establishments. Besides, different pieces of legislation were readily in place to provide protection and remedies against frauds, malpractices and misuses of funds, as well as environmental and safety

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problems that might be associated with organizations. These legal provisions were also applicable to the operation of Chinese temples as well as other religious bodies. SHA and DSHA(1) emphasized that there was no question of the Administration shirking its regulatory responsibility by putting forward the proposed voluntary registration scheme. The Administration believed that providing SHA with power to take action (when public interest was at stake and where necessary and justified) would provide an additional safeguard on top of the existing legislation mentioned above. Similar to the voluntary registration scheme, this additional safeguard would help enhance the existing system in protecting the public interest.

54. Responding to Mr TANG Ka-piu's enquiry about the applicability of the proposed voluntary registration scheme, DSHA(1) advised that -

- (a) the voluntary registration scheme was intended to apply to, not only those temples standing on lands vested in the Secretary for Home Affairs Incorporated ("SHAI") as the owner, but all of the approximately 600 Chinese temples in Hong Kong;
- (b) CTO was enacted to suppress and prevent any mismanagement of Chinese temples and abuses of their public donations received. In addition to the recommended removal of the outdated provisions imposed on Chinese temples from CTO, new measures were proposed for enhancing the existing system in view of public expectations on the proper handling of public donations and management of Chinese temples; and
- (c) under the current proposals, CTC would continue to exercise other existing functions in addition to the implementation and administration of the proposed voluntary registration scheme.

55. In response to Mr TANG Ka-piu's further enquiry, SHA advised that CTO was made to regulate Chinese temples which included Buddhist, Taoist and Confucian temples. At present, there was no legislation regulating the activities of places of worship observing other religions or denominations (e.g. Catholicism or Islam). Other religious facilities in Hong Kong were not subject to similar requirements as imposed on Chinese temples by the relevant provisions in CTO.

56. The Chairman, Mr TANG Ka-piu and Mr Paul TSE considered it unfair if only Chinese temples were subject to regulation of CTO while other religious facilities in Hong Kong were not subject to similar requirements. The Chairman expressed concern about the protection afforded to members of the public against unlawful activities in the absence of legislation regulating religious bodies. In response, DSHA(1) reiterated that protection and remedies against fraud or abuse of public donations by temples were

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available under various legislation and there were legal proceedings in place to protect the public.

Operation of the proposed voluntary registration scheme

57. The Deputy Chairman and Mr IP Kwok-him opined that if Chinese temples were allowed to register voluntarily with CTC, the scheme should provide adequate incentive for the approximately 600 Chinese temples in Hong Kong to proceed with the registration, so as to strengthen the protection of public interest. While expressing support for the Administration's proposal to amend CTO, Mr Paul TSE enquired about the implementation details of the proposed voluntary registration scheme.

58. In response, DSHA(1) and Principal Assistant Secretary for Home Affairs (Civic Affairs) 3 ("PASHA(CA)3") advised that a Chinese temple that wished to take part in the voluntary registration scheme should submit to CTC relevant information including the purpose of establishing the temple, the god(s) to be worshipped, major events involved, its owner(s) and administrator(s), its assets donated by the public and how it used/managed public donations. The full list of temples registered with CTC, with essential information of the temples, would be published on CTC's website for public access and inspection. In case there were major changes to the information submitted, the registered temples should report the changes to CTC. These apart, CTC would conduct random checks on the information submitted by the registered temples, and in case of any false claims or fraudulent concealment, CTC might consider cancelling the registration.

59. The Deputy Chairman was concerned about the measures to be taken to assist members of the public, especially the elderly, to differentiate registered temples from unregistered ones. He suggested that in addition to publishing on CTC's website the information submitted by the registered temples, consideration should be given to issuing "registration labels" to the registered temples confirming that they had fulfilled the registration requirements. SHA said that the Administration would consider the Deputy Chairman's suggestion.

Supervision and monitoring of Chinese temples

60. In response to the Deputy Chairman's enquiry about public complaints received against Chinese temples, Secretary/CTC said that according to the records of CTC, between 2010 and March 2015, a total of 102 complaints pertaining to the 25 temples directly administered by CTC (which were owned by SHAI or held by SHAI as trustee) had been received.

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61. The Deputy Chairman and Mr CHAN Chi-chuen requested the Administration to provide the Panel with the following information after the

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meeting -

- (a) in tabular form the number of complaints that CTC received in the past three years from members of the public against temples under CTC's supervision, the nature of the complaints and the names of the temples involved as well as the relevant follow-up actions taken by CTC/the Administration;
- (b) the enforcement situation of CTO, including the respective numbers of prosecutions and convictions as well as penalties imposed; and
- (c) whether the Administration had made reference to overseas experience, such as Taiwan, Singapore and Malaysia, when reviewing the existing regulatory regime for Chinese temples.

(Post-meeting note: The requested information was set out in the Administration's response provided to the Panel (LC Paper No. CB(2)1346/14-15(01)) for the special meeting held on 5 May 2015.)

62. Noting that the Administration proposed to remove from CTO section 4 which required that all Chinese temples must be established or maintained in complete and separate buildings used solely for the purpose of such temples, Dr Kenneth CHAN expressed worries that coupled with the implementation of the proposed voluntary registration scheme, it would lead to an increase in the number of columbaria facilities operating in private buildings under the name of temples.

63. SHA responded that in putting forward the proposals in the consultation paper, the Administration had given consideration to the introduction of other measures to assist members of the public in safeguarding their personal interests/public interest through other prevailing legislation. For example, the Theft Ordinance (Cap. 210) covered fraudulent or deceitful solicitation of money. If the case concerned contention over the temples involving charitable interest or significant public interest, the Secretary for Justice might perform his roles as the protector of public charities and amicus curiae to safeguard public interest. In addition, various pollution control and building/fire safety legislation was in place to regulate environmental pollution and structural safety problems caused by the operation of Chinese temples. Use of the land on which the Chinese temples were located would also be subject to the uses permitted under the land leases. As regards the provision of columbarium facilities by Chinese temples, it would be covered by the proposed licensing scheme under the Private Columbaria Bill.

Summing up

64. In response to the Chairman, PASHA(CA)3 said that HAB had kicked start a public consultation for two months with a consultation paper issued on 13 March 2015. Members of the public could express their views on or before 12 May 2015 through various channels, including post, fax or electronic means.

65. Dr Kenneth CHAN suggested that the Panel should hold a special meeting to receive public views on the subject matter. The Chairman said that she would consider the suggestion. Concluding the discussion, the Chairman requested the Administration to report to the Panel when the consultation results were available.

(Post-meeting note: The Panel subsequently held a special meeting on Tuesday, 5 May 2015, at 2:30 pm to receive views from deputations on the public consultation paper.)

66. There being no other business, the meeting ended at 5:28 pm.

Council Business Division 2
Legislative Council Secretariat
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