

立法會
Legislative Council

LC Paper No. CB(2)1933/99-00
(These minutes have been seen
by the Administration)

Ref : CB2/BC/23/98

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

**Minutes of Meeting
held on Friday, 30 July 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk
Hon FUNG Chi-kin
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung

Public Officers Attending : Mr John LEUNG
Acting Deputy Secretary for Constitutional Affairs

Mr Johnny WOO
Assistant Director of Urban Services (Leisure Management)

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Mr Tony MA
Assistant Director of Regional Services (Culture & Entertainment)

Ms K T LAI
Assistant Director of Regional Services
(Environmental Health Policy)

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman (Department of Justice)

Miss Selina LAU
Government Counsel (Department of Justice)

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Connie FUNG
Assistant Legal Adviser 3

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Confirmation of minutes

[LC Paper Nos. CB(2)2640/98-99 and CB(2)2651/98-99]

The minutes of meetings held on 25 May 1999 and 4 June 1999 were confirmed.

II. Matters arising

[Paper No. CB(2)2646/98-99(02)]

2. Members noted that the Administration had provided written response to members' questions raised at the meeting on 23 July 1999.

III. Clause-by-clause examination

[Paper Nos. CB(2)2204/98-99(01) and CB(2)2646/98-99(02)].

3. Members continued clause-by-clause examination starting from paragraph 63 of Schedule 3. The gist of discussion is summarized below.

Paragraph 63

4. Referring to members' concerns on the fees and charges policies raised at previous meetings, Acting Deputy Secretary for Constitutional Affairs (Ag DS(CA)) said that the Administration was considering members' views and would provide a response on the future vetting mechanism for further discussion around September 1999. At the Chairman's invitation, Ag DS(CA) then highlighted the main purposes of the new Part XIA on Fees and Charges under paragraph 63 of the Bill. Ag DS(CA) explained that the fees for licences and permits listed under the proposed section 124I were mainly related to food and environmental hygiene services and would be prescribed in regulations made by the Policy Secretary subject to the negative vetting of the Legislative Council (LegCo). As regards the fees and charges under the proposed section 124J, they were mostly admission/course fees for cultural and recreational programmes and hire charges of cultural and recreational venues. The latter would be determined by the Director of Leisure and Cultural Services subject only to the approval of the Financial Secretary. A separate section 124K dealt with the licensed activities such as billiard saloons in the Eleventh Schedule for which the relevant licensing fees and charges were to be determined by the Secretary for Home Affairs. Ag DS(CA) also drew members' attention to the proposed section 124L which empowered the Financial Secretary or any delegated public officer to reduce or waive fees or charges.

5. Ag DS(CA) also informed members that the proposed section 124I(f) had been included by mistake and no new licences would be issued for public slaughterhouses. The Administration would move a Committee stage amendment (CSA) to delete the subsection.

6. In response to Mr LEE Wing-tat's query, Senior Assistant Law Draftsman (SALD) responded that the proposed section 124I(1)(e)(iii) was related to the regulations in respect of food and drugs hygiene to be made by the Director of Food and Environmental Hygiene (DFEH) under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance). Assistant Legal Adviser 3 advised that section 56B (Determination of fees relating to food) of the Ordinance would be repealed, to be substituted by the proposed section 124I(1)(e)(iii).

7. Mr LEE Wing-tat inquired about the charging principles of the fees and charges for licenses and permits. In response, Ag DS(CA) referred to the

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Administration's paper [Appendix I to Paper No. CB(2)2204/98-99(01)] and said that the licence fees were normally set on a full cost recovery basis, but a number of existing fees were subsidized. The latter included burial fees, hawker licence fees, cremation and columbarium fees and meat examination fees. Mr LEE further asked whether there was any regular review mechanism for these fees and charges. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS) replied that the Regional Services Department (RSD) conducted annual costing review in respect of the licensing activities related to environmental health and make proposals for approval by the Provisional Regional Council (ProRC) based on the cost recovery principles.

8. Mr LI Wah-ming queried why determination of market stall rentals was not included in the new Part XIA on fees and charges. Ag DS(CA) responded that market stall rentals were commercial charges to be set at market rates. Moreover, the determination of market rentals was also not provided for in the principal Ordinance. AD/RS supplemented that ProRC was empowered by the Public Markets (Regional Council) By-laws to determine market rentals which were normally based on the valuation made by the Rating and Valuation Department. Mr LI considered that market stall rentals were not entirely commercial charges because the Provisional Municipal Councils (PMCs) made conscious policy decisions to subsidize some of these rentals. Responding to the Chairman, AD/RS said that those fees and charges to be prescribed under the proposed section 124I would be applicable across the board. However, market stall tenancy agreements of ProRC were signed with individual stallholders, and the rentals could vary substantially.

9. The Chairman expressed concern that if market stall rentals were not included in the Bill, the new Authority might have no statutory basis to reduce such rentals where necessary. AD/RS referred members to section 6 of the new Public Markets Regulation and said that the Authority (DFEH) would be empowered to let any stall at such rent as it determined. SALD added that section 80(1)(a) of the Ordinance had already empowered the Authority to make regulation in relation to the grant by lease for the use of stalls in public markets and that the rental could be adjusted subject to mutual agreement of the contracting parties. Senior Assistant Legal Adviser (SALA) advised that the section did not specify the authority for the determination of market stall rentals, and reference had to be made to the Third Schedule for who the Authority was. The Chairman asked whether determination of market rentals could be included in a schedule to the principal Ordinance.

10. Ag DS(CA) considered it not feasible to stipulate market stall rentals by way of subsidiary legislation (such as a schedule) because these were commercial charges which could be determined by tender, auction, contract or commercial negotiation.

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11. On the existing subsidies to market stall rentals, AD/RS informed members that for re-location of market stalls and hawkers, the new public market rentals were set at about 75% of the market rate in the initial stage, to be brought up to the market rate by phases. However, stallholders still had to bid the stalls by auction and the auction price might be well above the market rate. Mr Ambrose CHEUNG pointed out that the Provisional Urban Council (PUC) had adopted a different policy by consciously keeping the market rentals below the market rate. Mr Ambrose CHEUNG also disagreed with the Administration that commercial charges could not be included in the new regulation. He commented that the determination of fees and charges for commercial activities in civic centres and stadia such as the Hong Kong Stadium, the Hong Kong Coliseum and the Hong Kong Cultural Centre were covered by the proposed section 124J.

12. Mr LEE Wing-tat asked whether the existing policy of restricted tender and reduced rental to encourage itinerant hawkers to move into new markets would continue under the new administrative structure. The Chairman said that he had reservations about the restricted tender for public market stalls as it would create unfair competition. He also questioned whether the proposed legislation would provide statutory basis for the Authority to continue the policy, Ag DS(CA) said that the Bill did not preclude the new Authority from retaining the previous practice and that there would be no changes to existing policies in the initial period after re-organization.

13. Mr Ambrose CHEUNG expressed concern about the future monitoring of fee-setting after the abolition of the elected municipal councils. He asked about the mechanism for the Financial Secretary to monitor the determination of market stall rentals by the DFEH. Ag DS(CA) replied that the DFEH would need to discuss the charging principle with the Treasury if the market rate was not followed in the determination of market rentals. The Administration would consult the relevant LegCo Panel on the pricing policy and fee setting mechanism after the new administrative structure was set up.

14. Dr TANG Siu-tong asked whether there would be an appeal mechanism under the proposed legislation in respect of market stall rentals. Ag DS(CA) replied that the Bill had not provided for a statutory appeal mechanism for public market rental but the tenancy agreements were subject to negotiation similar to the Housing Authority markets. In this regard, AD/RS informed members that RSD had set up a non-statutory rentals appeals committee and it would be a policy decision for the new Environment and Food Bureau whether to retain the mechanism. Mr Ambrose CHEUNG maintained the view that there should be an effective monitoring mechanism over the determination of market rentals. Mr LEE Wing-tat shared similar views, pointing out that public market rentals would have great impact on the livelihood of stallholders. He asked whether it was possible to transfer to the principal Ordinance the empowering provisions in the existing By-law in respect of fee determination of market stalls. SALA

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advised that the relevant provision was in a regulation adopted by the Bill; upon enactment of the Bill the provision would have similar legal effect as if it was in the principal Ordinance. Mr LEE reiterated his concern that the future Department might be too strict in enforcing the market rental based on the valuation of R&VD. He said he would need to discuss with other Members about the need for a statutory appeals mechanism for market stall rentals.

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15. Mr Ambrose CHEUNG also expressed concern that LegCo Panels were not the appropriate forum to discuss individual cases of market rentals. He considered the proposed fee-setting mechanism unsatisfactory and requested the Administration to provide further information in this respect. In response to the Chairman, Ag DS(CA) agreed to provide a paper on the existing and proposed mechanism for determining the market rentals, the existing and proposed appeal systems, and the proposed mechanism for LegCo Panel to monitor the fee revisions.

16. Responding to Mr LEE Wing-tat, representatives of the Administration provided the following information on the other fees and charges -

- (a) Urban Services Department (USD) and RSD would provide services at cost to destroy cockroaches at private premises but similar services for destruction of mosquitoes and rats were provided free of charge;
- (b) the manager of a private cemetery was empowered under the Private Cemeteries Regulation to charge a fee;
- (c) if the Music Office was to be placed under the Department of Leisure and Cultural Services, the training fees charged by the Music Office would be determined under the proposed section 124J(1)(n); and
- (d) fees for use of facilities provided in a public pleasure ground, civic centre and museum were covered by the proposed section 124J(1).

17. Ag DS(CA) further pointed out that section 129 of the Ordinance had empowered the Authority to render services upon request and to recover the cost accordingly.

Paragraphs 64-66

18. Members noted that paragraphs 64-66 provided for the establishment of the new Licensing Appeals Board. Ag DS(CA) then briefed members on the Administration's paper entitled "Licensing Appeals Board" [Annex B to Paper No. CB(2)2646/98-99(02)]. He informed members that the Administration now

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proposed to create a Vice-Chairman for the Licensing Appeals Board so that the latter could preside at a hearing during the temporary absence of the Chairman. A CSA would be moved by the Administration to this effect if agreeable to the Bills Committee. Ag DS(CA) also drew members' attention to Annex III to the paper which made a comparison of the existing "Review Committee" system with the proposed "Licensing Appeals Board" system.

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19. Members also noted that the Administration had agreed to the request of the Legal Service Division and would move a CSA requiring the Licensing Appeals Board to give reasons for its decision. This would assist an aggrieved person to prepare for his appeal to the Municipal Services Appeals Board (MSAB).

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20. Responding to Mr LI Wah-ming, Ag DS(CA) said that the anticipated caseload of the Licensing Appeals Board should not be very heavy. In 1997-98, 27 appeal cases were dealt with by the PUC Review Select Committee while ProRC Review Sub-committee had less than ten cases. Mr LI Wah-ming also asked whether the Licensing Appeals Board would deal with appeals against termination of market stall tenancies. Ag DS(CA) said that the two PMCs adopted different practices in dealing with termination of market stall tenancies and he would provide a response later.

21. On the membership of Licensing Appeals Board, Ag DS(CA) said that LegCo Members and District Council members could be appointed to the Licensing Appeals Board as the proposed section 125A(3) only excluded public officers from membership. SALA advised that according to the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" meant any person holding a permanent or temporary office of emolument under the Government.

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22. Ag DS(CA) said that the Administration did not consider it necessary to stipulate the duration of members' tenure in order to provide for flexibility and continuity. He undertook to provide further information on the anticipated tenure of members of the Licensing Appeals Board.

23. Dr TANG Siu-tong asked whether judicial officers or judges would be sitting on the Licensing Appeals Board or the MSAB. Ag DS(CA) replied that the Licensing Appeals Board would have no public officers, therefore no judicial officer would be appointed. He added that Licensing Appeals Board as the first tier of the appeals mechanism was intended to be an informal mechanism although it did not preclude any party from making legal representation. The same would also apply to the panel of MSAB. However, the Chairman or Vice Chairman of the MSAB must be a "legally qualified" person and currently these two positions were held by District Court judges. In this connection, the Chairman explained that "legally qualified" meant qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

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SALA added that the definition of "public officer" in the Interpretation and General Clauses Ordinance (Cap. 1) had not expressly prescribed judges as public officers. It was in order for a District Court Judge to be appointed to the MSAB since there was express provision in the Municipal Services Appeals Board Ordinance (Cap. 220) for the positions of the Chairman and Vice Chairman to be held by persons qualified for appointment as a District Court Judge.

24. Mr LI Wah-ming expressed concern about the possibility of overlapping membership for the Licensing Appeals Board and the MSAB. Ag DS(CA) referred members to paragraph 6 of Schedule 4 to the Bill and said that MSAB would not include a person who, or a member of a body which, was involved in making the relevant administrative decision or the appeal board decision. Mr LI remarked that this would only exclude a person who was involved in the original decision from dealing with the same case. However, it would not exclude a member of the Licensing Appeals Board from being a member of the MSAB. He therefore asked about the reason for no express provision in the Bill excluding overlapping membership between LAB and MSAB.

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25. Ag DS(CA) replied that the Administration could not completely rule out the possibility that a person could be appointed to both the Liquor Licensing Board and the MSAB. The policy objective was only to prevent the same person who was involved in making the original decision from hearing the appeal. In view of members' concern, Ag DS(CA) undertook to discuss further with the Director of Administration who was responsible for the appointment of members to the MSAB and would provide a response later.

26. Mr Ambrose CHEUNG queried the rationale for limiting the scope of the first-tier appeal mechanism (i.e. the Licensing Appeals Board) to licensing decisions only. He said that the Administration should take an overall review of the future appeal mechanism for all municipal services including liquor licensing. In response, Ag DS(CA) explained that the jurisdiction of the Licensing Appeals Board was based on the scope of the reviews to be undertaken by the licensing authority under section 125(9) of the Ordinance. Liquor licences were currently granted by the Liquor Licensing Boards (LLBs) of the two municipal councils under the Dutiable Commodities (Liquor) Regulations. After the reorganization, the two LLBs would be merged into the new Liquor Licensing Board, and its composition and function would remain largely the same. Appeals in respect of liquor licences would also be made to the MSAB in future.

27. Mr Ambrose CHEUNG remarked that a two-tier appeal mechanism should also be made available for liquor licensing and the licensing authority could be a government official. The Chairman pointed out the future LLB would consist of non-officials only and that the Administration did not consider

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it necessary to have a two-tier appeal mechanism for liquor licensing. Ag DS(CA) explained that the existing LLB of the two municipal councils were also subject to a one-tier appeal mechanism, as the members of the LLB, who were non-officials, could provide feedback and comments from the point of view of the community and the affected residents. At Mr CHEUNG's request, Ag DS(CA) agreed to provide a paper on the rationale of the proposed appeal mechanism and the Consultant's report on the study to streamline restaurant licensing procedures.

28. In response to Mr Ambrose CHEUNG's enquiry about the role of the proposed Advisory Council on Food and Environmental Hygiene in dealing with food and hygiene matters, Ag DS(CA) said that the Bill did not contain provisions in respect of the proposed Advisory Council which would be a non-statutory body. The Administration was still considering the composition and functions of the proposed Advisory Council and would be willing to share its initial views with members.

Paragraphs 67-68

29. Members did not raise any queries.

Paragraph 69

30. Ag DS(CA) informed members that the proposed section 128(1)(b) sought to prescribe clearly that the court could issue a Prohibition Order in respect of premises which had or had been used without registration, licence or permit as required under the Ordinance, and when there was reasonable cause to believe that such premises would be so used again. He stressed that it was in line with the existing policy but the original provision in the Ordinance did not reflect clearly the policy intention. In response to Mr LEE Wing-tat, Ag DS(CA) clarified that section 128 of the Ordinance only provided for the power to close the premises and no prosecution could be initiated under that section. AD/RS explained that in the case of a suspension of registration or licence, the restaurant might cease to operate for the time being but all the necessary facilities were still retained. The proposed provision would enable the public officer to apply for a Prohibition Order to close the premises if there was reasonable cause to believe that the restaurant would operate again without a licence. He also clarified that a Closure Order would have to be applied under separate legal procedures, and that the USD and RSD were now examining the feasibility to empower their Directors to issue Closure Orders.

Paragraphs 70-79

31. Members did not raise any queries.

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Paragraph 80

32. Ag DS(CA) explained that some outdated or repealed subsidiary legislation had been saved under the Ordinance by virtue of section 149. It was no longer necessary as the relevant subsidiary legislation had already been included in the Ordinance. Ag DS(CA) also informed members that the Bill had retained the power for the Chief Executive in Council to amend the Duplicate Permits and Licences (New Territories) Rules under section 149(2), for the purpose of determining the fees payable for duplicates of permits or licences under section 4 of the New Territories Ordinance (Cap. 97).

Paragraphs 81-83

33. Members did not raise any queries.

Paragraph 84

34. Ag DS(CA) referred to the Administration's paper setting out the proposed changes of designated authorities for various sections in the Third Schedule [Annex C to Paper No. CB(2)2464/98-99(02)]. He said that the respective Directors would be the authorities in respect of operational and enforcement functions while the respective Policy Secretary would have the power to make regulations. However, regulations in respect of food hygiene and drugs were basically operational in nature. DFEH and the Director of Health would be the authorities for making such regulations respectively. Ag DS(CA) also informed members that the Administration now considered that the functions of advising the Commissioner for Transport on setting aside streets for hawking purposes, and allocating pitches in the streets for hawkers under section 83B should be performed by the DFEH. A CSA would be moved to this effect.

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35. Mr LI Wah-ming and Mr Ambrose CHEUNG queried the rationale for designating different authorities in respect of public swimming pools and other swimming pools under section 42. Ag DS(CA) explained that the public and other swimming pools were at present governed by two sets of different By-laws. The Public Swimming Pools By-laws were more related to the management of the public swimming pools and no licensing requirements were stipulated. However, the other swimming pools were subject to licensing requirements which emphasized on hygiene and safety conditions. In view of the different emphasis in the regulation of public and other swimming pools, the Administration concluded that the new Leisure and Cultural Services Department should be responsible for the operation of public swimming pools while the other swimming pools should be licensed by the DFEH who monitored hygiene conditions.

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36. Mr LI Wah-ming was of the view that there should be a uniform standard for all swimming pools and that one policy bureau should be held responsible for the hygiene conditions and management of all swimming pools. Ag DS(CA) explained that public swimming pools and other swimming pools were at present managed by different groups of staff who would be transferred to the Leisure and Cultural Services Department and Food and Environment Hygiene Department respectively. The management of public swimming pools was mainly on admission of members of the public and hire of venues, while the regulation of other swimming pools was more on water quality, availability of life savers and safety standards. The public and other swimming pools were therefore placed under two different departments due to different operational responsibilities.

37. In response to the Chairman, Assistant Director of Urban Services (Leisure Management) explained that although public swimming pools were not subject to any licensing requirements, their hygiene and safety conditions were maintained at a standard well above those of licensed private swimming pools. Ag DS(CA) added that Government was exempt from licensing requirements in most circumstances and PMCs were also exempt by legislation from the licensing requirements to own and manage public swimming pools. Mr LEE Wing-tat expressed concern that if Government was exempt from the licensing requirements, it would have no obligation to comply with the more stringent standard.

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38. To address members' concern, the Chairman requested the Administration to provide a paper on the rationale for having two systems for regulating public and private swimming pools, the differences in existing standards (e.g. water quality and safety standard) and the feasibility of providing uniform standards for public and private swimming pools.

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39. Mr LEE Wing-tat also expressed concern about the split of authorities for matters relating to food and drug under sections 56-75. He urged the Administration to provide a paper to address this grey area for further discussion by the Bills Committee. Ag DS(CA) noted the request.

40. On the power to seize and forfeit articles used or sold in markets under section 82 of the Ordinance, AD/RS informed members that the PMCs had delegated to the Housing Authority the power to arrest and to seize articles in markets within the Housing Authority premises. SALA advised that section 82 of the Ordinance would only apply to those markets which had been designated as public markets under section 79(3) of the Ordinance. Members noted that these designated public markets did not include any market in the Housing Authority premises. AD/RS supplemented that there was only one private market in Luen Wo Hui which was regulated under the Private Markets (Regional Council) By-laws.

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41. Mr LEE Wing-tat expressed serious concern that matters relating to environmental hygiene and health in the markets in the Housing Authority premises were left unregulated as they were outside the ambit of the Housing Ordinance (Cap. 283). In response, Ag DS(CA) said that the food sold in markets in the Housing Authority premises and private markets would have to comply with those regulations in respect of food under Cap 132. The Administration did not consider it necessary to have separate legislation for the regulation of these markets. He pointed out that the relevant By-laws governing public markets was more on management rather than food safety or environmental hygiene. Mr LI Wah-ming did not agree with the Administration and maintained the view that all markets should be subject to the same regulatory requirements.

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42. In view of members' concerns, the Chairman asked the Administration to provide a paper on the rationale for applying different regulatory requirements to markets in Government and Housing Authority premises and the markets in private premises.

43. As regards illegal hawkers in common places within the Housing Authority premises, AD/RS explained that while these could be regarded as public places within the jurisdictions of the USD and RSD, it had been the understanding that the Housing Authority should be responsible for managing its property under the Housing Ordinance. He added that as the power to prosecute illegal hawkers was not provided for in the Housing Ordinance, PMCs had delegated such power to the Housing Authority. Mr LEE Wing-tat said that the Housing Authority did not exercise the delegated power in respect of illegal hawkers in its premises. He remarked that it was an anomaly to have two different regulatory systems for "public places" and "public places within the Housing Authority premises". Responding to the Chairman, AD/RS confirmed that USD and RSD would not take enforcement action against illegal hawkers in private streets.

IV. Date of next meeting

44. The Chairman reminded members that the next meeting would be held on Wednesday, 8 September 1999 at 4:30pm.

45. The meeting ended at 12:25pm.

Legislative Council Secretariat

9 May 2000