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LegCo Panels on Manpower and Security

**Minutes of Joint Meeting held on
Thursday, 4 November 1999, at 4:45 pm
in Conference Room A of the Legislative Council Building**

Members present : Members of Panel on Manpower
Hon LAU Chin-shek, JP (Chairman)
Hon LEE Kai-ming, SBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
*Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
*Hon Andrew CHENG Kar-foo
Hon SZETO Wah

Members of Panel on Security
Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon Howard YOUNG, JP

Members attending : Hon Christine LOH
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Mrs Miriam LAU Kin-ye, JP

Members absent : Members of Panel on Manpower
*Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP

Members of Panel on Security
Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon WONG Yun-kan
Hon LAU Kong-wah

* Also member of Panel on Security

Public Officers attending : Item II

Mrs Regina IP, JP
Secretary for Security

Mr Timothy TONG
Deputy Secretary for Security

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry

Miss Cathy CHU
Principal Assistant Secretary for Security

Mr Andy CHAN
Assistant Secretary for Security

Mr Henry C K SIU
Assistant Director of Immigration

Item III

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mr Herman CHO
Principal Assistant Secretary for Education
and Manpower

Mr K S SO
Principal Assistant Secretary for Security

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour

Mr LAW Yiu-tung
Principal Immigration Officer

Mr LEUNG Min-cheung
Senior Labour Officer

**Attendance by
invitation** : Item III

Hong Kong Employers of Overseas Domestic Helpers
Association

Mrs YUNG MA Shan-ye, Betty
Chairperson

Mr Joseph LAW
Vice-Chairperson

Ms Eva CHAN
Member

Ms Julia HON
Member

Traffic Services Employees Association

Mr TSE Chu-sum
Chairman

Mr BUTT Yil-cheung
External Vice-Chairman

Mr CHAN Yiu-ming
Treasury Officer

Motor Transport Workers General Union

Mr CHEUK Siu-yee
Vice-Chairman

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Election of Chairman

Mr LAU Chin-shek was elected Chairman of the joint meeting.

II. Scheme on the admission of outstanding talents
(LC Paper No. CB(2) 130/99-00(02))

Membership of the Selection Committee

2. Members noted that a Selection Committee comprising official and non-official members would be set up to advise the Director of Immigration (D of Imm) the merits of the applications in the light of eligibility criteria and comments from relevant government departments.

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3. Miss CHAN Yuen-han said that the Hong Kong Federation of Trade Unions had no objection to the admission of talents who were not available in Hong Kong. However, as the wage levels in the Mainland were relatively low, many problems, such as complaints about family members of admitted professionals working illegally in Hong Kong, were found with the former scheme for the admission of professionals to work in Hong Kong. She considered that representatives of trade unions should be appointed to the Selection Committee. She added that the Mandatory Provident Fund Schemes Advisory Committee, which dealt with a lot of issues of technical nature, also comprised members representing the interests of employees. The technical nature of the matters considered by the Selection Committee should not be a reason for not appointing trade union representatives. Mr CHAN Wing-chan shared the same view. He said that jurors were also not professionals in the relevant field. Mr CHAN Kwok-keung added that many members of trade unions were professionals and well-educated people who possess sufficient knowledge to take part in the assessments. The lack of trade union representatives in the Selection Committee reflected the Administration's discrimination against trade unions.

4. Mr LEE Cheuk-yan said that employees were social partners of employers and the Administration. The Selection Committee should therefore comprise representatives of employers, employees, the Administration, and experts in relevant fields. He added that an expert in one category of advanced technology might not be an expert in another category of advanced technology.

5. Secretary for Security (S for S) assured members that the Administration had always recognized employees as its social partner. The Administration had no intention to discriminate against or exclude trade unions. Members of the Selection Committee would be appointed on an *ad personam* basis. In view of the limited size of the membership and the specific nature of the Scheme, it was necessary to appoint persons with expertise in relevant fields to the Selection Committee. Members were welcome to provide the names of suggested candidates to the Administration for consideration.

6. S for S added that as the talents to be admitted must possess outstanding qualifications and expertise or skills not readily available in Hong Kong, the Scheme should not lead to an influx of large number of unskilled low wage workers. In the United States (US), different immigration policies were applied to the entry of people with different levels of qualifications. A major function of the Selection Committee was to assess whether the applicants were involved in high technology and high value-added economic activities, and whether such talents were readily available in Hong Kong. In view of the limited membership size of the Selection Committee, priority would be given to people representing different industries and people with an international perspective. She assured members that the Panels would have full opportunity to monitor the implementation of the Scheme. Although information on individual applications would not be disclosed, overall statistics and information on the Scheme would be provided to the Panels. Mr LEUNG Yiu-chung opined that the membership size of the Selection Committee could be enlarged to accommodate trade

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union representatives.

7. Mr SIN Chung-kai expressed support for the Scheme. He said that in the US, huge numbers of talents were admitted for its information technology industry in each year. He considered that the proposed membership size of the Selection Committee might not be sufficient for examining a wide variety of advanced technology. Consideration should be given to enlarging the membership size, establishing subcommittees under the Selection Committee, or establishing a panel of persons to assist in examining applications and monitoring the Scheme. The appointment of trade union representatives to the Selection Committee or its subcommittees might alleviate the worries of trade unions. S for S responded that the Administration recognized the importance of preventing abuse of the Scheme. She added that regardless of the membership size, the Selection Committee might not be entirely accurate in assessing applications especially in its initial stage of operation. In the light of experience, there might be a need for a panel of assessors to assist the examination of applications. She assured members that the Administration would review the Scheme one year after its implementation. Mr SIN Chung-kai considered that the enlargement of membership size could be made at the commencement of the Scheme.

Possibility of abuse of the Scheme

8. Mr CHAN Wing-chan asked why talents were allowed to be self-employed after the first year of admission. He expressed concern that this might open the Scheme to abuse.

9. Mr CHEUNG Man-kwong also expressed concern that the Scheme might be open to abuse. He said that a major attraction of the Scheme was that a talent's spouse and children aged below 21 could also live in Hong Kong and become eligible for right of abode after ordinarily residing in Hong Kong for a continuous period of seven years. A person in the Mainland might pay for a company in Hong Kong to apply for admission under the Scheme to Hong Kong. Mr SIN Chun-kai shared the view that abuse of the Scheme should be prevented. S for S said that the Administration was also very concerned about the possibility of abuse of the Scheme and the impact on the population growth in Hong Kong. The Administration considered that talents' spouses should also be allowed to work and live in Hong Kong. Caution would be exercised by the Selection Committee to ensure that talents admitted would genuinely contribute to the development of high technology and high value-added industries. The Administration would also take steps to ensure that talents would return to the Mainland once they were no longer engaged in high technology or high value-added activities. Media coverage would also help monitor the contributions of the first batch of talents admitted.

10. S for S stressed that regardless of whether the talent changed job or became self-employed after the first year of admission, he would be required to continue to be engaged in high technology or high value-added activities. They would have to

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return to the Mainland once they were no longer engaged in such activities. The Administration would monitor the situation closely.

11. Mr LEUNG Yiu-chung asked whether there would be any mechanism to follow-up the employment situation of talents after their admission to Hong Kong. S for S responded that through the mechanism for extension of stay, the Administration could keep track of admitted talents' engagement in high technology or high value-added activities. In line with the existing policy on entry for employment of foreign nationals, talents and their family members would initially be admitted to Hong Kong for one year, thereafter extendable for two, two and three years. Whenever necessary, the Administration would visit the talents and their employers. Similar visits had been made in the past especially after complaints were received.

Criteria for the admission of talents

12. S for S informed members that in assessing an application for the admission of talents, the Selection Committee would have regard to -

- (a) whether the talent would contribute to enhancing the competitiveness of Hong Kong's economy, particularly in knowledge-intensive and high value-added activities ;
- (b) whether the talent possessed skills or knowledge required but not readily available in Hong Kong; and
- (c) whether the remuneration of the talent concerned was on par with that in the labour market of Hong Kong.

13. Mr LEE Cheuk-yan asked whether the sponsoring companies would be required to provide -

- (a) information on job opportunities to be created by the admission; and
- (b) the company's long-term plan in respect of transfer of technology and equipping existing employees with the skills or knowledge required.

14. S for S responded that in order to maintain flexibility of the Scheme, companies applying for the admission of talents would not be required to provide such information. Nevertheless, they would be required to provide sufficient information on their business and the post concerned. One of the main objectives of the Scheme was to create more job opportunities. In considering an application, factors such as the job opportunities to be generated, the economic benefits to be derived and whether the type of talent required was not readily available locally would all be taken into consideration. She added that overseas experience revealed that the admission of talents had stimulated the development of local education and training.

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15. Mr David CHU asked why the remuneration of talents would be one of the criteria for admission. He said that remuneration of talents should be determined by the respective employers. S for S responded that the Administration had no intention to influence the remuneration of talents. However, the level of remuneration should be monitored so that the Scheme would not become a channel for importation of low income labour.

16. Mrs Sophie LEUNG said that besides the academic qualifications of talents, the leadership and drive of the talent should also be taken into consideration in assessing his or her suitability. S for S responded that proven working experience in relevant areas was one of the admission criteria under the Scheme. A talent's leadership and drive for innovation would be considered in the context of his or her working experience.

17. Mr James TIEN stated that the Liberal Party fully supported the Scheme. He said that if Hong Kong wished to become an international city comparable to New York and London, it had to adopt an open policy towards the admission of talents to work in Hong Kong. It would also be unfair if graduates from local universities were allowed to work overseas while talents from other places were not allowed to work in Hong Kong. He added that the processing of applications took a very long time under the Pilot Scheme for the entry of Mainland professionals (Pilot Scheme). He hoped that the processing of applications under the Scheme would not take a long time.

Quota for the Scheme

18. Mr LEUNG Yiu-chung asked whether any quota would be imposed under the Scheme, and whether the Scheme would only be launched for a certain period of time. Mr Andrew CHENG also asked why a quota could not be imposed at the initial stage and reviewed one year after its implementation.

19. S for S said that there was no cessation date for the Scheme, which was generally supported by the local and international business communities. Nevertheless, the Scheme would be reviewed one year after implementation.

20. As regards the quota of talents to be admitted, S for S said that the quota on the Pilot Scheme had created unnecessary administrative procedures. Instead of imposing a quota, the Administration considered it more appropriate for the market to determine the number of talents to be admitted under the Scheme. She added that abuse of the Scheme could be minimized by a cautious Selection Committee rather than by imposing a quota. She stressed that the absence of a quota did not mean that all applications would be approved. The issue of whether there should be a quota would be reconsidered in the review to be made one year after the implementation of the Scheme.

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21. In response to Mr LEE Kai-ming, S for S said that the number of professionals admitted under the Pilot Scheme was far fewer than the quota for the following reasons -

- (a) all recruitment had to be made through three designated Mainland agents which charged a high referral fee;
- (b) employers in Hong Kong had no opportunity to take part in the selection of professionals. Selection was made exclusively by the three Mainland agents; and
- (c) only graduates from 36 key Mainland tertiary institutions were eligible for the Pilot Scheme.

22. S for S added that experience with the Pilot Scheme revealed that the imposition of a quota would only create unnecessary administrative hindrances.

23. S for S informed members that talents to be admitted under the Scheme would have to be graduates from reputable institutes which normally referred to PhD-awarding institutes. There were about 200 such institutes in the Mainland. The Education and Manpower Bureau was in the process of drawing up a list of such institutes.

Research/information on industries/sectors in need of the admission of talents

24. Deputy Secretary for Education and Manpower (DSEM) said that after implementation of the Scheme, the Administration would gather information on the types of talents admitted and identify areas in which training should be strengthened. Mr Andrew CHENG questioned why the Administration had no information on the types of human resources needed in Hong Kong. He added that as most talents could be trained from local universities, the Administration should explain how local universities would develop local talents in the longer term. DSEM responded that the education programmes provided by local universities were tailored to the needs of Hong Kong. The Administration had continuously carried out research on the human resources needed by employers. In the previous year, it had completed two consultancy studies on the manpower and training needs of the travel and tourism industry as well as the information technology sector. The Administration would continue to research on the needs of different industries. Statistics on the types of talents admitted would assist the Administration in identifying areas in which talents were needed so that training in such areas could be strengthened. He stressed that the admission of talents into Hong Kong would facilitate the development of new industries and new trades.

25. Mr Andrew CHENG requested the Administration to provide a list of industries in need of talents not readily available in Hong Kong in the coming two years. DSEM said that as the admission of talents would facilitate the development

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of new industries and new job opportunities, it was difficult to draw up such a list. However, some examples of such industries had been provided in the report of the Commission of Innovation and Technology (CIT). Deputy Secretary for Trade and Industry (DSTI) added that examples of the broad technology areas highlighted in the report of CIT included areas -

- (a) where improved technology would help enhance the existing strengths of Hong Kong;
- (b) where Hong Kong's position relative to the Mainland offered competitive advantages;
- (c) where Hong Kong might exploit emerging or new technologies to create synergy with existing industrial clusters; and
- (d) where Hong Kong already had considerable expertise in the application of high or new technology.

DSTI added that as the CIT report stressed that Hong Kong's requirements for talents would evolve with time, and drawing up a rigid list of the industries requiring admission of talents would be inappropriate. The Scheme would facilitate the economic development of Hong Kong. She said that one should not be over-worried about possible abuses, as there were already safeguards against them.

III. Review of the driving duties of foreign domestic helpers (FDHs)

(LC Paper No. CB(2) 2601/98-99(05), CB(2) 246/99-00(01)-(05), CB(2) 273/99-00(01)-(04))

26. Mrs Selina CHOW said that the Administration had stated at the meeting of the Panel on Manpower (Panel) on 22 July 1999 that it would consult interested parties, including FDH employers' associations, on the Administration's proposed ban on the driving duties of FDHs. However, the Hong Kong Employers of Overseas Domestic Helpers Association stated that its views had not been fully considered by the Administration. She said that the Liberal Party supported the policy that FDHs should not perform full-time driving duties. However, FDHs should not be banned from performing driving duties incidental to and arising from domestic duties.

Meeting with Hong Kong Employers of Overseas Domestic Helpers Association (HKEODHA)

27. At the invitation of the Chairman, Mrs Betty YUNG presented the views of HKEODHA as follows -

- (a) Under section 2 of the Employment Ordinance (Cap. 57), "domestic servant" included a chauffeur. FDHs should not be banned from

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performing driving duties if it was not a full-time one;

- (b) HKEODHA had objected to the new proposal in its letters of 5 and 28 August 1999 to the Secretary for Education and Manpower. It questioned why the views of employers had been neglected in the consultation exercise;
- (c) HKEODHA questioned why the Administration had not consulted the Labour Advisory Board on the proposal;
- (d) driving duties were performed by domestic helpers in other countries;
- (e) the possession of a local driving licence by a FDH did not necessarily mean that he or she was performing driving duties. Some FDHs might obtain a driving licence merely for their own use when they return to their countries;
- (f) the proposed ban would deprive the freedom of life of employers as well as FDHs and therefore in contravention of human rights;
- (g) not many employers could afford to employ a full time driver. It might also be necessary for a FDH to drive when his or her employer suddenly felt sick during driving; and
- (h) if the driving duties of FDHs could be banned because of the unemployment situation of local drivers, other duties of FDHs might also be banned in the future when the unemployment rate in other trades was high.

28. Mr Joseph LAW added that the Administration should not ban the driving duties of FDHs by immigration measures. He added that although the Administration stated that there were enforcement difficulties against cases of FDHs performing full-time driving duties, it had not provided statistics on the number of prosecutions made against FDHs undertaking full-time driving duties and the reasons for unsuccessful prosecutions. Full-time driving duties and driving duties incidental to and arising from domestic duties should not be difficult to distinguish. It was irresponsible to impose a total ban on the driving duties of FDHs merely because of enforcement difficulties. He considered that the Administration should issue guidelines and step up its enforcement action against cases of FDHs performing full-time driving duties.

Meeting with Traffic Services Employees Association (TSEA)

29. Mr BUTT Yil-cheung presented the submission of TSEA as follows -

- (a) Since 1992, TSEA had received complaints about FDHs performing full-time driving duties;

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- (b) TSEA had been reflecting its concerns on the issue to the Labour Department and the Immigration Department (ImmD) since 1993. The issue was also brought to the attention of Duty Roster Members of the former LegCo and discussed by the former LegCo Panel on Manpower in 1996. At that time, the Administration said that FDHs were allowed to undertake driving duties incidental to and arising from domestic duties and it had no plans to change such a policy. The problem had since become more serious, with 2 100 additional local driving licences being issued to FDHs between 1990 and 1999;
- (c) a survey conducted in 1996 by TSEA revealed that 30% of family drivers were FDHs;
- (d) a recent survey indicated that out of a total of 70 family drivers in Villa Monte Rosa, 24 were FDHs; and
- (e) the problem had now deteriorated to an extent that a middle-aged driver formerly working for directors of some reputable organizations had failed to secure a driving job one year after becoming unemployed and eventually worked as a caretaker.

He said that TSEA supported the Administration's proposed ban on the driving duties of FDHs. If the proposed ban was not imposed, the problem would continue to deteriorate.

Motor Transport Workers General Union (MTWGU)

30. Mr CHEUK Siu-ye presented the views of MTWGU as follows -

- (a) Since late 1980s, MTWGU had received a number of complaints about FDHs performing full-time driving duties. It had reflected the problem to LD and ImmD, which agreed to look into the issue jointly. MTWGU considered that employers should not be allowed to take advantage of loopholes in existing legislation;
- (b) a survey conducted in 1998 revealed that 30% of family driving jobs were taken up by FDHs. This had forced some family drivers to perform driving duties on other vehicles or work as caretakers; and
- (c) MTWGU was concerned that some prominent figures such as legislators were employing FDHs as full-time drivers.

31. Mrs Selina CHOW said that although she was sympathetic towards the trade unions, she considered that FDHs should not be prohibited from driving duties incidental to and arising from domestic duties merely because of enforcement

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difficulties. She considered that the Administration should step up its enforcement action against suspected cases of FDHs being deployed as full-time chauffeurs while continuing to allow FDHs to perform driving duties incidental to and arising from domestic duties.

32. Mrs Selina CHOW expressed concern that the Administration was using administrative measures to interfere into private contracts. She considered that it would be *ultra vires* for ImmD to determine the provisions of employment contracts.

33. Principal Immigration Officer (PIO) said that under the Immigration Ordinance (Cap. 115)(IO), all persons who entered Hong Kong for employment were subject to the condition of stay that they should only take such employment as might be approved by D of Imm. To implement the ban on FDHs performing driving duties, a new condition of stay to this effect could be imposed by virtue of the power conferred under section 11 of IO.

34. Mrs Selina CHOW said that it could be required in the condition of stay of FDHs that driving could not be their primary duty.

35. PIO said that the present arrangement whereby FDHs were allowed to undertake driving duties incidental to and arising from domestic duties had given rise to grey areas which made enforcement action virtually impossible. A FDH found driving could easily defend that the driving duty was incidental to and arising from domestic duties. It was very difficult to prove that a FDH was performing driving duties on a full-time basis.

Enforcement of the new measure

36. In response to Miss Christine LOH's question on how the Administration would enforce the proposed ban, DSEM said that the Administration would act on complaints. With effect from 1 January 2000, ImmD would only accept applications made under a new standard employment contract which prohibited the performance of driving duties. FDHs permitted to work under existing contracts would not be affected. The ban would apply when their contracts expired and new ones were signed. Full implementation of the ban on all FDH contracts was expected in two years' time.

Prosecution of offenders

37. In response to Miss Christine LOH, PIO said that FDHs performing full-time driving would be prosecuted for breach of condition of stay, while employers aiding and abetting their FDHs to breach the condition would be prosecuted for aiding the commission of the offence. Miss Christine LOH considered that the new measures would be difficult to implement. She added that the prosecution of FDHs was unfair and constituted discrimination against employees. It should be the employers who should be prosecuted. Miss CHAN Yuen-han disagreed and said that both the sellers

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and purchasers of pirated compact discs were prosecuted.

Consultation with interested parties

38. Mr James TIEN said that at the Panel meeting on 22 July 1999, the Administration had advised that it would consult interested parties before a decision was made on the proposal. He questioned why the Administration had not reported its decision to the Panel after the consultation exercise. He also questioned why the Administration had come to the conclusion in its paper that the Panel unanimously supported the proposed ban. DSEM responded that after the Panel meeting in July, the Administration had consulted a number of interested parties, including trade unions, FDH associations, FDH employers' association and foreign embassies. After considering all the views received, the Administration had decided to propose a total ban on the driving duties of FDHs. He recalled that at the Panel meeting in July 1999, the Chairman concluded at the end of the discussion on the issue that the Panel fully supported the proposed ban, but no member raised any objection. The Administration therefore concluded that the Panel unanimously supported the proposed ban. Mr James TIEN said that apart from views expressed by Mr HO Sai-chu, members of the Liberal Party did not give views on the issue on the understanding that the Administration would report back to the Panel after consultation with relevant parties. The Administration should not conclude that the Panel unanimously supported the proposed ban.

39. Mr LEE Cheuk-yan asked whether the driving duties mentioned in the submission of Mr Noel Thomas PATTON were in violation of the condition of stay under the existing FDH contracts. He questioned whether driving the employer to dinners and parties was incidental to and arising from domestic duties. PIO responded that it was a grey area. Prosecution would be very difficult especially if both the employer and FDH remained silent. Mr LEE Cheuk-yan said that driving the employer to parties was obviously not incidental to and arising from domestic duties. The difficulties involved in prosecution reflected that there were loopholes in the existing measures and changes were necessary. Miss CHAN Yuen-han referred to the same submission and said that it was very unfair to an FDH if an employer required a FDH to standby for driving duties throughout the day.

40. Miss CHAN Yuen-han said that the problem had dragged on for a very long time. Although Hong Kong Federation of Trade Unions considered that legislation should be enacted to impose a total ban on the driving duties of FDHs, it recognized the difficulties involved in introducing legislative amendments and had thus supported the proposed administrative measure.

IV. Date of next meeting

41. Members agreed to schedule a further joint meeting of the Panels on 18 November at 2:30 pm to continue discussion on the proposed ban on driving duties by

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FDHs. It was also agreed that members who had raised their hands but were unable to ask questions at this meeting would be invited by the Chairman to ask questions first at the next joint meeting.

42. There being no other business, the meeting ended at 7:00 pm.

Legislative Council Secretariat

12 January 2000