

立法會
Legislative Council

LC Paper No. CB(2) 1596/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 19th meeting
held in the Legislative Council Chamber
at 2:45 pm on Friday, 12 April 2002**

Members present :

Hon Fred LI Wah-ming, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP
Hon LAU Kong-wah
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP

Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok

Members absent :

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP
Hon WONG Sing-chi

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mr LAW Kam-sang, JP	Deputy Secretary General
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Ms Pauline NG	Assistant Secretary General 1

Mr Ray CHAN	Assistant Secretary General 3
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Kathleen LAU	Chief Public Information Officer
Ms Anita SIT	Chief Assistant Secretary (1)6 (Temp)
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Mary SO	Senior Assistant Secretary (2)8

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**I. Confirmation of the minutes of the 18th meeting held on 22 March 2002
(LC Paper No. CB(2) 1470/01-02)**

The minutes were confirmed.

II. Matters arising

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

Resolution of the Board of Directors of the Po Leung Kuk

2. The Deputy Chairman said that Acting (Ag) CS was informed that a subcommittee had been set up to study the Resolution. Ag CS had said that pending the Council's agreement, the Secretary for Home Affairs (SHA) would not in the meantime give approval to the Po Leung Kuk to undertake charitable work outside Hong Kong.

3. The Deputy Chairman added that the Chairman's letter to SHA on the matter and SHA's reply had been issued to Members vide LC Paper No. CB(2) 1545/01-02 dated 9 April 2002.

4. Miss Margaret NG informed Members that the subcommittee formed to study the Resolution had held one meeting with the Administration and the Po Leung Kuk. The subcommittee did not consider it necessary to extend the scrutiny period of the Resolution, and a report would be provided to the House Committee after receiving the Administration's written response to certain queries raised by the subcommittee.

Arrangements for House Committee meetings

5. The Deputy Chairman said that Ag CS had undertaken to remind the Finance Bureau to arrange for the more important and urgent items to be placed on the early part of the Finance Committee agenda.

III. Business arising from previous Council meetings

(a) Legal Service Division report on subsidiary legislation gazetted on 28 March 2002

(LC Paper No. LS 75/01-02)

6. The Legal Adviser said that three items of subsidiary legislation were gazetted on 28 March 2002 and tabled in Council on 10 April 2002.

7. The Legal Adviser advised that the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2002 and the Road Traffic (Traffic Control) (Amendment) Regulation 2002 sought to improve the existing legislation in respect of the use of vehicle headlamps and hazard warning lights with a view to improving road safety.

8. The Legal Adviser said that under the Road Traffic (Traffic Control) (Amendment) Regulation 2002, the driver of a motor cycle or motor tricycle must keep all obligatory front lamps, headlamps and rear lamps lighted at all times while driving. The Amendment Regulation also removed the condition that the vehicle must be stationary when hazard warning lights were used, hence hazard warning lights could be used when a motor vehicle was likely to be a hazard to other road users whether it was stationary or in motion.

9. The Legal Adviser further said that the Panel on Transport was briefed on the proposals of the two Amendment Regulations at its meeting on 25 May 2001 and generally accepted the proposals. He added that the drafting of the Amendment Regulations was in order.

10. Members did not raise any query on these two Amendment Regulations and the other item of subsidiary legislation, the Tax Reserve Certificates (Rate of Interest) (No. 4) Notice 2002.

11. The Deputy Chairman reminded Members that the deadline for amending these three items of subsidiary legislation was 8 May 2002, or 15 May 2002 if extended by resolution.

(b) Legal Service Division report on subsidiary legislation gazetted on 4 April 2002

(LC Paper No. LS 76/01-02)

12. The Legal Adviser said that six items of subsidiary legislation were gazetted on 4 April 2002 and tabled in Council on 10 April 2002.

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13. The Legal Adviser explained that the Fixed Penalty (Public Cleanliness Offences) Regulation specified the forms of fixed penalty notices and provided for the methods of payment. The Regulation would come into operation on a date to be appointed by the Secretary for the Environment and Food. The Deputy Chairman said that the Administration had briefed the Panel on Food Safety and Environmental Hygiene in March 2002 on the Administration's timetable to commence the operation of the Fixed Penalty (Public Cleanliness Offences) Ordinance in May 2002.

14. On the Gas Safety (Installation and Use and Miscellaneous) (Amendment) Regulation 2002, the Legal Adviser said that it sought to implement a mandatory approval scheme of domestic gas appliances imported or manufactured for use in Hong Kong. The scheme would not affect the consumers as no duty or obligation was imposed on them.

15. The Legal Adviser further said that according to the Administration, the mandatory scheme was based on the experience of the voluntary approval scheme that had been implemented since June 1998. The mandatory approval scheme would commence on 1 June 2002, while the prohibition on the import and the sale of non-approved appliances would take effect from 1 January 2003. The Legal Adviser added that the Panel on Economic Services was briefed on the proposal on 19 June 2000 and informed of the progress on 25 February 2002.

16. The Legal Adviser explained that the Noise Control (Motor Vehicles) (Amendment) Regulation 2002 sought to update the motor vehicle noise emission standards by adopting the latest noise standards adopted by the European Union and Japan. The Amendment Regulation would come into operation on 1 June 2002 and would only affect motor vehicles first registered after that date. The Legal Adviser added that the Administration had decided to grant a one-year grace period or exemptions to different classes of vehicles as appropriate.

17. As regards the Business Registration Ordinance (Amendment of Schedule 2) Order 2002, the Legal Adviser said that it increased the levy payable on the registration of a business or a branch, issue of a further business registration certificate or a further branch registration certificate under the Ordinance. The Legal Adviser further said that according to the Administration, the increase was necessary to ensure the financial viability of the Protection of Wages on Insolvency Fund, and the Administration had explained to the Panel on Manpower on 21 March 2002 the reasons for the proposed increase. The Legal Adviser added that the Order would take effect from 16 May 2002.

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18. The Legal Adviser said that the proposed amendments to the Patents (General) (Amendment) Rules 2002 and the Intellectual Property (Miscellaneous Amendments) Ordinance 2001 (2 of 2001) (Commencement) Notice 2002 were technical in nature, and would come into operation on 1 June 2002.

19. Members did not raise any query on these six items of subsidiary legislation.

20. The Deputy Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 8 May 2002, or 15 May 2002 if extended by resolution.

IV. Further business for the Council meeting on 17 April 2002

(a) The Chief Executive will address the Legislative Council on the system of accountability for principal officials

21. The Deputy Chairman informed Members that the Chief Executive (CE) would address the Legislative Council (LegCo) on the system of accountability for principal officials on 17 April 2002.

22. Ms Emily LAU said that she was disappointed that CE had to wait until 17 April 2002 to brief LegCo on the framework of the accountability system, given that the Executive Council had already discussed the matter on 9 April 2002. Ms LAU asked whether CE would stay after his address to answer Members' questions, and whether Rule 8(b) of the Rules of Procedure was applicable. Ms LAU pointed out that it appeared that reporters, and not Members, would have the chance to ask questions as CE would meet the press after addressing LegCo. Ms LAU suggested that CE should be requested to take questions from Members after his address. The purpose was not to debate the subject, but to seek clarification on the proposed framework.

23. Dr YEUNG Sum said that Members belonging to the Democratic Party were of the view that the accountability system for principal officials would introduce not only important but also fundamental changes to the civil service system. Dr YEUNG further said that even some senior government officials knew very little about the proposed framework. Dr YEUNG stressed that as CE was accountable to LegCo, he should take questions from Members after his address at the Council meeting on 17 April 2002. He also proposed that the duration for questions should be one hour.

24. Mr TSANG Yok-sing agreed that the proposed system of accountability for principal officials was an important subject. He said that discussion on the

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subject would continue after CE's address on 17 April 2002, for instance, at the meeting of the Panel on Constitutional Affairs (CA Panel) scheduled for 18 April 2002, where the Secretary for Constitutional Affairs (SCA) would further explain the proposed framework and answer Members' questions. Mr TSANG also agreed with Ms Emily LAU that there should not be a debate on the subject at the Council meeting on 17 April 2002. As regards Ms Emily LAU's suggestion that CE should be requested to answer Members' questions after addressing the Council on 17 April 2002, Mr TSANG also sought clarification from the Secretary General (SG) as to whether Rule 8(b) of the Rules of Procedure was applicable.

25. SG advised that Rule 8 of the Rules of Procedure was applicable as it provided that CE "may at his discretion attend meetings of the Council" for the purposes of, under Rule 8(a), "addressing the Council at any time as he shall think fit, including during a special meeting" and, under Rule 8(b), "answering Members' questions put to him on the work of the Government".

26. Ms Miriam LAU said that according to Rule 28 of the Rules of Procedure, the President "may in his discretion allow short questions to be put to the public officer making the statement for the purpose of elucidating it". Ms LAU asked whether the spirit of Rule 28 could be applied in that Members be allowed to ask questions only for the purpose of seeking elucidation.

27. SG responded that CE's Office had so far not informed the LegCo Secretariat that CE would not answer Members' questions after his address on 17 April 2002. If Members agreed that CE should be requested to exercise his discretion to answer Members' questions after his address, the request could be put to CE. SG further explained that Rule 28 was only applicable to statements made by "designated public officers", which did not include CE himself.

28. Miss Margaret NG said that there was no rule in the Rules of Procedure which prohibited CE from answering Members' questions. It was therefore a matter of whether CE was willing to answer Members' questions put to him after he addressed the Council on 17 April 2002. She further said that if a Member put a question to CE after his address and CE refused to answer the question, there was no rule in the Rules of Procedure that could compel CE to answer the question.

29. Mr Albert HO said that Members should let CE know before the meeting on 17 April 2002 that they would like to put questions to him after his address at the meeting. He pointed out that if CE was agreeable to answer Members' questions, time would have to be set aside for the purpose and such arrangement should preferably be made beforehand to facilitate the smooth conduct of the meeting.

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30. Mr LEE Cheuk-yan agreed that the subject of accountability of principal officials was very important. However, he disagreed that Members should have to "request" CE to answer Members' questions, given that CE had the responsibility to do so. He suggested that the Chairman of the House Committee should simply ask whether CE would answer Members' questions at the Council meeting on 17 April 2002, and it would be up to CE to decide how his duty to be accountable to the Council should be discharged. Mr LEE also disagreed that Members should only be allowed to raise questions to seek elucidation, as the scope of the questions that could be asked would be very narrow.

31. Referring to Ms Miriam LAU's suggestion that the spirit of Rule 28 be applied, Mr Andrew WONG suggested that consideration be given to applying Rule 21 to this case as the Administration had indicated that a paper would be provided to Members. SG responded that Rule 21 dealt with the presentation of papers by a Member or a designated public officer, and designated public officers did not include CE himself.

32. Mr Howard YOUNG said that CE had previously attended Council meetings to answer Members' questions on various subjects. He agreed that the Chairman of the House Committee should convey to the Administration that Members would like to put questions to CE on his address, and an appropriate amount of time should be set aside by the President for the purpose.

33. Miss Margaret NG said that Members should leave it to the President to determine how much time would be allowed for Members' questions to CE. SG responded that the President would prefer to have Members' view on how much time should be set aside for putting questions to CE so that she could take it and CE's view into consideration in determining the arrangement for CE's address at the Council meeting on 17 April 2002.

34. Mr TSANG Yok-sing said that he saw no objection to the Chairman of the House Committee conveying to CE the request that Members should be able to put questions to him to seek clarification on his address. Mr TSANG stressed that Members should avoid getting into a debate on the subject when putting questions to CE on 17 April 2002.

35. Mr Andrew WONG also expressed concern that Members' questions might turn into a debate at the Council meeting on 17 April 2002. He pointed out that sometimes questions raised by Members had long preambles and contained views and arguments as if the Members concerned were speaking at a debate. He suggested that a special meeting should be arranged for another day, say, using the time slot of the meeting of the CA Panel on 18 April 2002,

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for CE to address the Council and answer Members' questions on the subject of accountability of principal officials. Mr NG Leung-sing concurred with Mr WONG.

36. Ms Emily LAU reiterated her request that CE should stay after his address to answer Members' questions at the Council meeting on 17 April 2002. Dr YEUNG Sum proposed that the duration for Members' questions should be one hour. Ms Emily LAU concurred with Dr YEUNG.

37. Ms Miriam LAU agreed that CE should answer Members' questions on his address. She added that it would be more appropriate for CE to advise on the amount of time for questions.

38. Mr TSANG Yok-sing said that he had no strong views on the duration of raising questions. He stressed that Members' should only raise questions on CE's address. Ms Emily LAU and Dr YEUNG Sum agreed with Mr TSANG.

39. The Deputy Chairman said that he would put to vote the proposal that Members should be able to put questions to CE on his address at the Council meeting on 17 April 2002, and one hour should be set aside for the purpose. The result was 25 Members voted for the proposal and 2 voted against the proposal. The Deputy Chairman said that he would write to CE and also ask CS to convey Members' request to CE. Members agreed.

(b) Questions
(LC Paper No. CB(3) 528/01-02)

40. The Deputy Chairman said that 20 written questions had been scheduled for the Council meeting on 17 April 2002.

(c) Bills - First and Second Readings

(i) Revenue Bill 2002

(ii) Revenue (No. 2) Bill 2002

(iii) United Nations (Anti-Terrorism Measures) Bill

41. The Deputy Chairman said that the three Bills would be introduced into the Council on 17 April 2002 and considered by the House Committee on 26 April 2002.

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V. Business for the Council meeting on 24 April 2002

(a) Questions

(LC Paper No. CB(3) 529/01-02)

42. The Deputy Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 24 April 2002.

(b) Bills - First and Second Readings

Land (Miscellaneous Provisions) (Amendment) Bill 2002

43. The Deputy Chairman said that the Bill would be introduced into the Council on 24 April 2002 and considered by the House Committee on 26 April 2002.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

(i) Extension of Vetting Period (Legislative Council) Bill 2002

(ii) Medical and Health Care (Miscellaneous Amendments) Bill 2001

(iii) Travel Agents (Amendment) Bill 2001

44. The Deputy Chairman said that Members had not raised objection to the resumption of the Second Reading debate on the three Bills.

(d) Government motions

(i) Proposed resolution to be moved by the Secretary for Health and Welfare under the Pharmacy and Poisons Ordinance relating to:

- **the Pharmacy and Poisons (Amendment) Regulation 2002; and**
- **the Poisons List (Amendment) Regulation 2002**

(Wording of the proposed resolution vide LC Paper No. CB(3) 512/01-02 dated 27 March 2002.)
(LC Paper No. LS 74/01-02)

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45. The Legal Adviser said that the Amendment Regulations sought to add six new medicines to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations. This meant that pharmaceutical products containing such substances must be sold in pharmacies by or under the supervision of a registered pharmacist and in his presence, with the support of prescriptions.

46. The Legal Adviser further said that the Pharmacy and Poisons Board also proposed to re-classify Nicotine by transferring it from Part I to Part II of the Poisons List where it was intended to be used in nicotine replacement therapy and in the form of chewing gum containing not more than 2 mg of Nicotine. As a consequence, products containing Nicotine would be allowed to be sold to an authorised seller of poison or a listed seller of poisons.

47. Members did not raise objection to the Secretary for Health and Welfare moving the proposed resolution at the Council meeting on 24 April 2002.

- (ii) **Proposed resolution to be moved by the Secretary for Education and Manpower under the Occupational Safety and Health Ordinance and the Interpretation and General Clauses Ordinance relating to the Occupational Safety and Health (Display Screen Equipment) Regulation**
(Wording of the proposed resolution vide LC Paper No. CB(3) 520/01-02 dated 4 April 2002.)

48. The Deputy Chairman said that Subcommittee formed to study the Regulation had provided a report to the House Committee on 22 March 2002. He reminded Members that the deadline for giving notice of amendments was 17 April 2002.

(e) Members' motions

- (i) **Motion on "Safeguarding the reasonable and legitimate rights and interests of employees"**
(Wording of the motion issued vide LC Paper. CB(3) 534/01-02 dated 11 April 2002.)
- (ii) **Motion on "The problem of "working poverty""**
(Wording of the motion issued vide LC Paper. CB(3) 536/01-02 dated 11 April 2002.)

49. The Deputy Chairman said that the above two motions would be moved by Mr LEUNG Fu-wah and Mr LEE Cheuk-yan respectively. He reminded Members that the deadline for giving notice of amendments, if any, was 17 April 2002.

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VI. Report of Bills Committee and subcommittee on subsidiary legislation

(a) Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 1537/01-02)

50. The Deputy Chairman said that 15 Bills Committees and five Subcommittees were in action, and 10 Bills Committees were on the waiting list.

(b) Report of the Subcommittee on Revenue (Variation and Reduction of Fees and Charges) Order 2002

(LC Paper No. CB(1) 1455/01-02)

51. Mr Albert HO Chun-yan, Chairman of the Subcommittee, said that the Subcommittee had held one meeting to discuss the Order with the Administration. The Subcommittee was concerned about the propriety and legal implications on giving effect to fee waiver and reduction of fees and charges by way of an Order under section 39A(a) of the Public Finance Ordinance, and had sought clarification from the Administration at the meeting. The Subcommittee found the arrangement acceptable and recommended support of the Order.

VII. Letter dated 21 March 2002 from Hon Cyd HO to Chairman of House Committee concerning the luncheon speech given by the Chief Secretary for Administration on 18 March 2002

(Hon Cyd HO's letter dated 21 March 2002)

(Speech given by the Chief Secretary for Administration on 18 March 2002 (LC Paper No. CB(2) 1553/01-02(01))

(Extract from the draft minutes of meeting of Panel on Constitutional Affairs on 18 March 2002 (LC Paper No. CB(2) 1553/01-02(02))

52. Referring to her letter dated 21 March 2002, Ms HO pointed out that while CS had publicly and freely talked about the subject of "ministerial system" at a luncheon meeting on 18 March 2002, SCA had been reluctant to disclose any details of the proposed accountability system at the meeting of the CA Panel held in the same afternoon. She hoped that the Chairman of the House Committee would remind CS that under the Basic Law, the Government was accountable to LegCo. The Administration should not make important announcements through the press to circumvent questioning by LegCo.

53. Ms Cyd HO also expressed concern that the proposed accountability system had recently been reported in great detail in the press based on information provided by "informed sources". Ms HO said that the Chairman

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of the House Committee should raise with CS why the press, and not LegCo, had been given so much information. Ms HO further said that the Chairman should also ask CS whether the Administration considered the situation a problem, and whether he would do anything about it.

54. The Deputy Chairman agreed that the press reports about the subject of accountability of principal officials in the past few days begged the question of whether the Administration had been providing information to the press and bypassing LegCo.

55. Mr Andrew WONG said that according to the text of CS's speech delivered at the luncheon meeting on 18 March 2002 and the transcript of CS's media session given after the luncheon meeting, what CS had said had not gone beyond what was said by CE in his 2000 and 2001 Policy Addresses, or what was discussed previously by the CA Panel.

56. Mr Andrew WONG further said that what was much more serious was the detailed description of the proposed accountability system in recent press reports. He expressed concern whether the Administration had been providing information to the press ahead of briefing LegCo. He also queried why the Administration did not brief LegCo on the framework of the accountability system for principal officials immediately after the meeting of the Executive Council on 9 April 2002.

57. Referring to page 5 of CS's speech delivered at the luncheon meeting on 18 March 2002, Ms Cyd HO said that she did not agree that CS had not said more than what was already in CE's previous Policy Addresses. However, given recent developments, she agreed that what should be raised with CS was why there were so many "informed sources" providing information to the press, and why the Administration had not briefed LegCo on the proposed system at the earliest opportunity.

58. Mr IP Kwok-him said that he agreed with Mr Andrew WONG that what CS had said at the luncheon meeting on 18 March had either been discussed by the CA Panel or covered in CE's previous Policy Addresses.

59. Mr TSANG Yok-sing also agreed with Mr Andrew WONG that what CS had said about the system of accountability for principal officials at the luncheon meeting on 18 March 2002 was nothing new. Mr TSANG pointed out that the recent press reports about the proposed accountability system based on information provided by "informed sources" had given rise to a lot of speculation, and there was no way of telling whether or not these reports were accurate. Mr TSANG said that if the "informed sources" were senior government officials themselves, such arrangement of disseminating information by the Administration was not acceptable.

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60. Dr YEUNG Sum agreed that the Chairman of the House Committee should ask CS whether the "informed sources" were senior government officials themselves, and if yes, whether the Administration would continue to disseminate important information in such manner.

61. The Deputy Chairman proposed and Members agreed that he should raise the following queries with CS -

- (a) Why did the Administration have to wait until 17 April 2002 to announce the framework of the accountability system to LegCo, given that the Executive Council had already discussed the matter on 9 April 2002?
- (b) Why was there so much information about the framework reported in the press in the past few days? Were the "informed sources" which provided the information to the press senior government officials themselves? If this was the case, would the Administration continue to disseminate important information in such a manner? If this was not the case, was the Administration happy with the situation and would the Administration do anything about it?

VIII. Any other business

62. There being no further business, the meeting ended at 3:50 pm.