

立法會
Legislative Council

LC Paper No. CB(2) 2499/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 29th meeting
held in the Legislative Council Chamber
at 4:21 pm on Friday, 13 June 2003**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
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, GBS, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP
Hon LAU Kong-wah

Hon LAU Wong-fat, GBS, 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
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
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, JP

Members absent :

Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon Miriam LAU Kin-ye, JP
Hon Abraham SHEK Lai-him, JP
Dr Hon LO Wing-lok

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
Ms Pauline NG	Assistant Secretary General 1
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Miss Becky YU	Chief Assistant Secretary (1)1
Miss Polly YEUNG	Chief Assistant Secretary (1)3
Ms Connie SZETO	Chief Assistant Secretary (1)4
Miss Salumi CHAN	Chief Assistant Secretary (1)5
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Anita HO	Assistant Legal Adviser 2
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 28th meeting held on 6 June 2003
(*LC Paper No. CB(2) 2376/02-03*)

The minutes were confirmed.

II. Matters arising

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

Independent inquiry into the handling of the outbreak of Severe Acute Respiratory Syndrome (SARS)

2. The Chairman said that she had written to the Chief Executive to inform him formally of the motion passed by the House Committee on 30 May 2003.

III. Business arising from previous Council meetings

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

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(i) **Landlord and Tenant (Consolidation) (Amendment) Bill 2003**

(LC Paper No. LS 115/02-03)

3. The Legal Adviser explained that the Bill sought to amend the Landlord and Tenant (Consolidation) Ordinance by removing provisions relating to the security of tenure of domestic premises under Part IV of the Ordinance. The Bill also sought to abolish the notice of termination requirement under Part V of the Ordinance which affected tenants of commercial premises, and to make consequential amendments.

4. The Legal Adviser pointed out that the Bill would bring to an end the security of tenure for tenants of domestic premises under Part IV of the Landlord and Tenant (Consolidation) Ordinance for the first time in almost 30 years.

5. The Legal Adviser said that a consultation paper on the proposals was issued by the Administration on 22 January 2003 to invite views from the public and relevant professional bodies and organizations. According to the Administration, there was overwhelming support for the proposals. The Hong Kong Bar Association was the only professional body that questioned the logic of relaxing the security of tenure provisions.

6. The Legal Adviser further said that the Panel on Housing was briefed on the proposals at its meeting on 14 February 2003 and the results of the consultation on 7 April 2003.

7. The Chairman proposed that in view of the wide implications of the Bill, a Bills Committee should be formed. Members agreed. The following Members agreed to join : Mr James TIEN, Mr Albert HO (as advised by Mr Fred LI), Miss Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Howard YOUNG, Mr LAU Ping-cheung and Ms Audrey EU (as advised by Miss Margaret NG).

(ii) **Boundary Facilities Improvement Tax Bill**

(LC Paper No. LS 125/02-03)

8. The Legal Adviser said that the Bill sought to impose a boundary facilities improvement tax on persons departing from Hong Kong by sea or by land, and on the owners of specified vehicles in respect of departures from Hong Kong of those vehicles, and to provide for related and consequential matters.

9. The Legal Adviser further said that a person who departed from Hong Kong by a passenger ship or at a through-train railway station or at a

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boundary crossing would be liable to pay the tax at \$18. The owner of a private car departing Hong Kong via a land departure point would have to pay the tax at \$100 per car.

10. The Legal Adviser advised that certain classes of persons, as detailed in paragraph 6 of the report, were to be exempted from payment of the tax.

11. The Legal Adviser said that the report also set out the consultation conducted by the Administration on the Bill. He added that Members might wish to form a Bills Committee to scrutinize the Bill in detail.

12. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Mrs Selina CHOW, Mr CHAN Kam-lam, Mr SIN Chung-kai, Mr LAU Kong-wah, Ms Miriam LAU (as advised by Mr James TIEN), Ms Emily LAU, Miss CHOY So-yuk (as advised by Mr IP Kwok-him) and Ms LI Fung-ying.

(b) Legal Service Division report on subsidiary legislation gazetted on 6 June 2003 and tabled in Council on 11 June 2003
(LC Paper No. LS 127/02-03)

13. The Legal Adviser said that six items of subsidiary legislation were gazetted on 6 June 2003 and tabled in Council on 11 June 2003.

14. The Legal Adviser explained that the purpose of the Road Traffic (Temporary Reduction of New Territories Taxi Fares) Regulation 2003 and the Road Traffic (Temporary Reduction of New Territories Taxi Fares) (No. 2) Regulation 2003 was to reduce the scale of fares for the hiring of New Territories taxis temporarily for the period from 8 June 2003 to 7 December 2003.

15. The Chairman said that the Panel on Transport had discussed the fare concession at its meetings on 29 May and 2 June 2003, and would continue to follow up the matter. She added that the Administration's paper on the latest developments referred to in paragraph 7 of the report had been issued to Members and was also tabled at the meeting.

16. Mr LEUNG Fu-wah said that the New Territories taxi temporary fare concession involved complex problems. He proposed that a subcommittee be set up to study the two Regulations in detail.

17. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Mr Andrew WONG, Ms Miriam LAU (as advised by the Chairman), Ms LI Fung-ying and Mr LEUNG Fu-wah.

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18. The Legal Adviser said that the Apprenticeship (Designation of Trades) Order 2003 added the trades of audio-visual and radio-frequency mechanic, and building services mechanic to the list of designated trades. The Legal Adviser further said that the Apprenticeship (Periods of Apprenticeship) Notice 2003 specified the period of apprenticeship for the trade of audio-visual and radio-frequency mechanic to be three years and building services mechanic to be four years. The Legal Adviser added that both the Order and Notice would come into operation on 17 October 2003.

19. The Legal Adviser advised that no difficulties relating to the legal and drafting aspects of the above items had been identified.

20. Ms LI Fung-ying enquired about the impact of these two items of subsidiary legislation on those apprentices who had just joined the two trades. Ms LI suggested that a subcommittee be formed to study these two items of subsidiary legislation.

21. The Legal Adviser responded that the Order would not have retrospective effect, but he did not have information about the transitional arrangements and the number of apprentices and employers who would likely be affected.

22. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Mr CHAN Kwok-keung, Ms LI Fung-ying and Mr LEUNG Fu-wah.

23. The Legal Adviser said that the Designation of Libraries Order 2003 cancelled the designation of the library at Unit Nos. 102-107, Cheung Lok House, Cheung Wah Estate, Fanling. Members did not raise any queries on this Order.

24. The Legal Adviser said that the Village Representative (Election Petition) Rules provided for matters relating to election petitions lodged in relation to an election under the Village Representative Election Ordinance (2 of 2003).

25. The Chairman said that the Rules would be studied by the Subcommittee on subsidiary legislation relating to Village Representative elections, chaired by Mr Andrew WONG.

26. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 9 July 2003, or the first Council meeting in the next session if extended by resolution.

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IV. Further business for the Council meeting on 18 June 2003

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

Stamp Duty (Amendment) Bill 2002

27. The Chairman said that the relevant Bills Committee reported to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the above Bill.

(b) Members' motion

Proposed resolution to be moved by Hon IP Kwok-him under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 710/02-03 dated 9 June 2003.)

28. The Chairman said that the Subcommittee on subsidiary legislation relating to District Councils election gazetted on 16 May 2003 made a report at the last House Committee meeting. Mr IP Kwok-him, Chairman of the Subcommittee, would move a motion to extend the scrutiny period of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 to 9 July 2003.

V. Business for the Council meeting on 25 June 2003

(a) Questions

(LC Paper No. CB(3) 715/02-03)

29. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 25 June 2003.

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

(i) Electronic Transactions (Amendment) Bill 2003

(ii) Import and Export (Facilitation) Bill 2003

(iii) Waste Disposal (Amendment) Bill 2003

(iv) Companies (Amendment) Bill 2003

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30. The Chairman said that the above four Bills would be introduced into the Council on 25 June 2003 and considered by the House Committee on 27 June 2003.

(c) **Government motion**

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

(d) **Members' motions**

(i) **Motion to be moved by Hon LEE Cheuk-yan**

32. The Chairman said that Mr LEE Cheuk-yan had been allocated a debate slot and the draft wording of his motion on "The 1 July march" was tabled at the meeting.

33. The Chairman added that the President had not yet approved the wording of the motion.

(ii) **Motion on "Establishing a labelling system for genetically modified food"**

(Wording of the motion issued vide LC Paper No. CB(3) 723/02-03 dated 12 June 2003.)

34. The Chairman said that the above motion would be moved by Mr Fred LI and the wording of the motion had been issued to Members.

35. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 18 June 2003.

VI. Report of Bills Committee and subcommittee

(a) **Report of the Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002**

(LC Paper No. CB(2) 2416/02-03)

36. Miss Margaret NG, Chairman of the Bills Committee, explained that the Evidence (Miscellaneous Amendments) Bill 2002 comprised two Parts -

(a) Part I dealt with competence and compellability of spouses in criminal proceedings; and

(b) Part II dealt with the giving of evidence by way of a live television link in criminal proceedings.

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37. Miss Margaret NG said that details of the deliberations of the Bills Committee were set out in the report. Miss NG further said that the Administration had been very willing to listen to the views of the Bills Committee throughout the scrutiny of the Bill, and had proposed Committee Stage amendments (CSAs) to address the issues and concerns raised by the Bills Committee.

38. Miss Margaret NG added that the Bills Committee supported the CSAs and resumption of the Second Reading debate on the Bill on 25 June 2003.

39. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 25 June 2003. The Chairman said that the deadline for giving notice of CSAs was 16 June 2003.

(b) Report of the Bills Committee on Revenue Bill 2003
(*LC Paper No. CB(1) 1926/02-03*)

40. Ms Audrey EU, Chairman of the Bills Committee, explained that the Bill sought to implement the revenue proposals in the 2003-04 Budget relating to the motor vehicles first registration tax.

41. Ms EU said that the Bill proposed to abolish the existing exemption for three vehicle accessories, namely, air-conditioners, audio equipment and anti-theft devices, and warranties provided by vehicle distributors. Ms EU further said that although the Bills Committee supported the proposal in principle, there was concern about “double taxation” if these accessories had to be re-installed within the prescribed six-month period, after first registration was required, due to breakdown or the need to ensure compatibility as in the case of anti-theft device. To address members' concern, the Administration had agreed to move a CSA in this respect.

42. Ms Audrey EU said that the Bill also proposed to widen the tax bandwidths for private cars from \$100,000 for the first three steps to \$150,000 for the first two steps and \$200,000 for the third step, and to decrease the effective rate for these cars to mitigate the impact of abolishing the exemptions. In order to raise revenue, the Bill also proposed to increase the tax rates for the more expensive private cars and make the tax more progressive through the introduction of a marginal tax system. The proposed marginal rates were 35%, 75%, 105% and 150% for the four tax bands respectively.

43. Ms EU further said that the motor vehicle trade had expressed grave concern about the proposed increases. The trade had pointed out that it was going through difficult times because of the substantial drop in car sales amid the economic downturn, and the situation was aggravated by the SARS

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outbreak. Ms EU pointed out that according to the Administration, the overall number of registrations of private cars had continued to pick up after the Budget announcement. The trade, however, had claimed that car distributors had actually been liquidating their existing stocks of cars in April 2003 at the pre-Budget prices and absorbing the increase in tax themselves.

44. Ms EU informed Members that the trade had proposed to reduce the marginal rates for the four tax bands of private cars to 35%, 55%, 75% and 95% respectively. The Administration made a counter proposal that the marginal rates for private cars be revised to 35%, 70%, 85% and 105%. Ms EU said that the majority of members did not accept the Administration's counter proposal. The Bills Committee decided to move CSAs to lower the marginal rates for the four tax bands of private cars to 35%, 55%, 75% and 95% respectively, and also to lower the first registration tax rate for motor cycles from 40% to 35%.

45. Ms EU said that the Administration's view had been sought on the Bills Committee's proposed CSAs and the Administration had responded that the CSAs would have the effect of disposing of or charging Government's revenue under Rule 57(6) of the Rules of Procedure. As the Administration's written response was received after the Bills Committee's last meeting on 30 May 2003, she had scheduled a further meeting of the Bills Committee for 16 June 2003 to consider the Administration's response.

46. Ms Audrey EU informed Members that although the Bills Committee had to hold a further meeting, it did not object to the resumption of the Second Reading debate on the Bill on 25 June 2003.

47. Mr SIN Chung-kai requested the Secretariat to provide, for the Bills Committee meeting on 16 June 2003, details of precedents where Members had successfully moved amendments to reduce the rates or levels of increase in respect of revenue proposals announced in previous Budgets.

48. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 25 June 2003. The Chairman reminded Members that the deadline for giving notice of CSAs was 16 June 2003.

(c) **Report of the Bills Committee on Revenue (No. 2) Bill 2003**
(*LC Paper No. CB(1) 1927/02-03*)

49. Mr Eric LI, Chairman of the Bills Committee, explained that the Bills Committee sought to implement the revenue proposals relating to salaries tax, profits tax and property tax announced in the 2003-04 Budget.

50. Mr Eric LI said that the Bills Committee had held three meetings to

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examine the Bill. Mr LI further said that while some members considered the revenue proposals in the Bill acceptable, some other members had reservations about introducing tax increases when the economy was still in the doldrums.

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51. Mr LI pointed out that there had been concern about the impact of the removal of exemption of holiday warrants/passages, for salaries tax assessment purpose, on the travel industry. The Administration had clarified that under the proposed arrangement, a holiday warrant/passage would be assessed and subject to salaries tax if it was capable of being converted into money, or it was a discharge of the employee's personal liability to pay for the passage. As regards expenses for business trips in the performance of a taxpayer's duty as an employee, this would not be regarded as employment income for the purpose of salaries tax assessment. If a business trip was combined with a holiday journey, an apportionment of the holiday and non-holiday portions according to circumstances might be required. To address members' concerns, the Inland Revenue Department would issue a Departmental Interpretation and Practice Note to provide guidance on the basis for such apportionment. Mr LI added that the Administration would give an undertaking to prepare the Note at the resumption of Second Reading debate.

52. Mr Eric LI informed Members that the Bill also sought to increase the deeming rate of assessable profits from 10% to 30% of the payments received by non-residents in the form of royalties or licence fees. As the Bill also sought to increase the profit tax rate for corporations from 16% to 17.5%, the effective rate of the withholding tax after amendments would become 5.25% (i.e. 30% x 17.5%). The Bills Committee had met with deputations from the film and music record industries, and they had pointed out that the proposals would increase the operational costs of local companies and weaken their competitiveness. However, the Administration had advised that the effective tax rate of 5.25% on royalties paid to non-residents still compared much lower than the effective rates for comparable tax currently in force in neighbouring jurisdictions.

53. Mr LI added that the Bills Committee had sought clarification from the Administration on issues such as double taxation of local film distributors in connection with their purchase of the rights to distribute films in Hong Kong and in neighbouring countries.

54. Mr Eric LI said that the Bills Committee had no objection to the resumption of the Second Reading debate on the Bill on 25 June 2003. Mr LI further said that the Administration would move CSAs in response to members' concerns, and Mr SIN Chung-kai would also move CSAs to clauses 10 and 11 of the Bill. The Bills Committee would not move any CSAs.

55. Mr SIN Chung-kai said that he would, on behalf of Members belonging to the Democratic Party, move CSAs to the Bill, with a view to retaining the existing levels of salaries tax.

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56. Members did not raise objection to the resumption of the Second Reading debate on 25 June 2003. The Chairman reminded Members that the deadline for giving notice of CSAs was 16 June 2003.

(d) Report of the Bills Committee on Telecommunications (Amendment) Bill 2002

57. Mr SIN Chung-kai, Chairman of the Bills Committee, said that since his last report to the House Committee on 6 June 2003, the Bills Committee had held two more meetings on 9 and 13 June 2003 to consider his proposed CSAs.

58. Mr SIN Chung-kai further said that the Administration had advised that it had reservations about his CSAs and would need more time to study them. The Bills Committee would meet again on 19 June 2003 to consider the Administration's response to his CSAs.

59. Mr SIN informed Members that the Administration had requested the Bills Committee to support its giving notice on 16 June 2003 for the Bill to resume the Second Reading debate on 2 July 2003. While members of the Bills Committee agreed that the Second Reading debate on the Bill should resume within the current session, they did not support the Administration giving notice before the Bills Committee had considered the Administration's response to his proposed CSAs. He added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 9 July 2003, and the deadline for giving notice of resumption was 23 June 2003.

60. Mr SIN added that he would make a verbal report to the House Committee on 20 June 2003, and a written report would be provided to the House Committee on 27 June 2003.

(The Deputy Chairman took the chair during the temporary absence of the Chairman.)

(e) Report of the Bills Committee on Chemical Weapons (Convention) Bill

61. Ms Cyd HO, Chairman of the Bills Committee, explained that the object of the Bill was to provide for the necessary legal authority to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Convention).

62. Ms Cyd HO said that the Bills Committee had conducted in-depth

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discussion on the Bill and would provide a written report at the next House Committee meeting.

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63. Ms HO informed Members that the Commissioner of Customs and Excise was empowered under the Bill to seize, detain and forfeit articles, vessels and vehicles, and to release seized vessels and vehicles prior to hearing. While members had no objection to providing the Commissioner with such powers, the Bills Committee considered that such powers should be clearly set out in the Bill to safeguard the interests of the law enforcement authority and owners of the seized articles, vessels and vehicles. The Administration had accepted the suggestions made by the Bills Committee and would move CSAs accordingly.

64. Ms Cyd HO further informed Members that clause 5(f) of the Bill provided that no person should assist, encourage or induce, anyone to engage in any activity prohibited under the Convention. Some members of the Bills Committee had reservations about the use of the term "encourage" in the clause, as such a term was not commonly used in other common law jurisdictions and its meaning was not clear. The Bills Committee considered that given that the Convention was not tailor-made for common law jurisdictions, it was not necessary to adopt the exact wording of the Convention in the Bill. The Administration had clarified that the use of the term "encourage" in the Bill was to implement the Convention in full in Hong Kong. At the request of the Bills Committee, the Secretary for Commerce, Industry and Technology (SCIT) had agreed to explain, in his speech at the resumption of the Second Reading debate, the reason for using the term "encourage" in clause 5(f) of the Bill.

65. Ms Cyd HO said that the Bills Committee had also discussed the administrative arrangement between the Central People's Government and the Hong Kong Special Administrative Region Government for appointing "in-country escorts" for conducting inspections of chemical facilities in Hong Kong.

66. Ms Cyd HO further said that the Bills Committee did not object to the resumption of the Second Reading debate on the Bill on 2 July 2003, and the Administration would move CSAs to address members' various concerns.

67. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 2 July 2003. The Deputy Chairman said that the deadline for giving notice of CSAs was 21 June 2003.

(f) Report of the Bills Committee on Copyright (Amendment) Bill 2001 and Copyright (Amendment) Bill 2003

68. Mr SIN Chung-kai, Chairman of the Bills Committee, reported that the Bills Committee had concluded its deliberations on the Copyright (Amendment) Bill 2001 at its last meeting on 12 June 2003.

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69. Mr SIN explained that the Bill sought to remove the civil and criminal liabilities related to parallel importation of and subsequent dealings in computer software under the Copyright Ordinance. Mr SIN said that in the course of deliberations, some members were of the view that the scope of the liberalization should cover all types of computer software, including educational and recreational software, so as to maximize the benefits of parallel imports to consumers. However, some other members had expressed concern that the scope of the liberalization was too wide and the interests of the music, movie and publishing industries would be undermined, which was not conducive to the future development of these industries.

70. Mr SIN further said that the Administration had proposed a duration test and an economic value test for excluding movie and music clips and e-book incorporated in computer software from the scope of liberalization. To further safeguard the interests of copyright owners, the Administration had proposed a new formulation to define the scope of liberalization which involved the use of "a likely purpose of acquisition test" to exclude copyright work embodied in computer software from the scope of liberalization. Mr SIN added that the industries supported the new formulation.

71. Mr SIN Chung-kai informed Members that the Hong Kong Bar Association had made a submission on certain drafting issues to the Bills Committee at its meeting on 12 June 2003. At the request of members, the Administration had agreed to provide its response to the submission by 14 June 2003. Mr SIN added that the Bills Committee had no objection to the resumption of the Second Reading debate on the Bill on 2 July 2003.

72. Mr SIN added that the Bills Committee would continue its scrutiny work on the Copyright (Amendment) Bill 2003.

73. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 2 July 2003. The Deputy Chairman reminded Members that the deadline for giving notice of CSAs was 21 June 2003.

(g) Report of the Bills Committee on Companies (Amendment) Bill 2002

74. Ms Audrey EU, Chairman of the Bills Committee, said that the Bill sought to implement 17 recommendations of the Standing Committee on Company Law Reform in relation to the rights of shareholders and duties of directors. Ms EU further said that while members generally supported the principles of the Bill, they were concerned as to how the recommendations would be put into effect, particularly the operational problems raised by the legal and accountancy professions and the commercial sector.

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75. Ms EU pointed out that in response to members' concerns and suggestions, the Administration had agreed to move CSAs to the Bill. Three meetings had in fact been held this week to consider the CSAs. However, a lot of time had been spent on discussing with the Administration how the CSAs should be drafted. Ms EU informed Members that the Bills Committee was of the view that the recommendations should be implemented as early as possible. Suggestions had been made by the Bills Committee and professional bodies to improve the drafting of the Bill, but the Administration had been reluctant to accept their suggestions.

76. Ms EU further informed Members that the Administration had agreed at the meeting on 12 June 2003 to move CSAs to require disclosure of the relevant transactions in aggregate, provided that details of such transactions were entered and maintained in a register of the company for a period of 10 years. Although the Bills Committee had scheduled two more meetings for 16 and 17 June 2003, it did not envisage any difficulties for the Administration to provide the necessary CSAs as there were similar provisions in the Banking Ordinance. The Bills Committee therefore agreed that she should inform the House Committee, at this meeting, that members did not object to the resumption of the Second Reading debate on the Bill on 2 July 2003, on the understanding that the Administration would be able to provide the final version of CSAs in the morning of 13 June 2003.

77. Ms EU said that although the Administration had provided the revised CSAs before the deadline, they were drafted in a way different from what had been agreed to by the Bills Committee and new definitions had also been added. Given such a development, she would like to listen to the views of other members of the Bills Committee on whether they supported the resumption of the Second Reading debate on the Bill on 2 July 2003.

78. Mr Eric LI shared Ms Audrey EU's view that the Administration had been reluctant to accept suggestions of the Bills Committee on amendments to the Bill. Mr LI pointed out that members of the Bills Committee and professional bodies had tried their best to examine the Bill and made practical suggestions on improvements. He agreed that the previous CSAs provided by the Administration were ambiguous and difficult to be put to effect. He therefore had reservations about supporting the passage of the Bill. He considered that Members should not be rushed into passing the Bill on 2 July 2003.

79. Ms Emily LAU said that she was a member of the Bills Committee and agreed with the remarks made by Ms Audrey EU. She could not see why the Administration must resume the Second Reading debate on the Bill at the Council meeting on 2 July 2003, and not 9 July 2003. Ms LAU further said

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that given the need to carefully consider the views of the professional bodies on the provisions of the Bill and the CSAs, she did not support the resumption of the Second Reading debate on the Bill on 2 July 2003.

80. Ms LAU said that she personally considered that Members should not support resumption of the Second Reading debate on a bill before the relevant Bills Committee had provided a written report to the House Committee. Ms LAU expressed dissatisfaction with the rush to conclude scrutiny of bills to enable them to resume the Second Reading debates within the current session. She pointed out that Members had insufficient time to consider proposed amendments and views of deputations. She suggested that the matter should be raised with CS.

81. Mr NG Leung-sing said that he was a member of the Bills Committee and had expressed his support, at the Bills Committee meeting on 12 June 2003, for the Bill to resume the Second Reading debate on 2 July 2003. Mr NG further said that in the light of what Ms Audrey EU had reported at this meeting, he would rescind his support for the resumption of the Second Reading debate on the Bill on 2 July 2003. He added that as the Bill covered many complex issues, the CSAs should be carefully considered.

82. The Deputy Chairman said that as the Bills Committee would hold further meetings and make a further report to the House Committee, the House Committee could decide at its next meeting as to when the Bill should resume the Second Reading debate. Members agreed.

**(h) Report of the Bills Committee on Legislative Council (Amendment)
Bill 2003**

83. Mr Andrew WONG, Chairman of the Bills Committee, informed members that the Bills Committee had completed clause by clause examination of the Bill at its meeting on 12 June 2003. The Administration had undertaken to provide a response to the outstanding issues and a complete set of CSAs for discussion at the next meeting of the Bills Committee on 16 June 2003.

84. Mr Andrew WONG said that the Bills Committee had considered, inter alia, the following major issues in the course of its deliberation on the Bill -

- (a) amendments relating to geographical constituencies and functional constituencies (FCs);
- (b) delineation of the electorate of certain FCs; and
- (c) the scheme of financial assistance for candidates running in

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Legislative Council elections.

85. Mr Andrew WONG further informed Members that the Bills Committee supported the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting on 2 July 2003. The Bills Committee would submit a written report to the House Committee on 20 June 2003.

86. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 2 July 2003

(i) **Report of the Subcommittee on the Mutual Legal Assistance in Criminal Matters (Ireland) Order and the Mutual Legal Assistance in Criminal Matters (Netherlands) Order**
(LC Paper No. CB(2) 2363/02-03)

87. Mr James TO, Chairman of the Subcommittee, said that the Subcommittee had completed scrutiny of the Mutual Legal Assistance in Criminal Matters (Ireland) Order (the Ireland Order) and the Mutual Legal Assistance in Criminal Matters (Netherlands) Order (the Netherlands Order).

88. Mr TO further said that the Subcommittee supported the Secretary for Security (S for S) moving a motion at the Council meeting on 2 July 2003 to give effect to the Ireland Order.

89. Mr TO informed Members that the Subcommittee had noted that the Chinese translation of the "Requesting Party" and "Requested Party" in Article 14(5) of the Netherlands Order was wrong. The Administration had responded that the translation error would be rectified by way of an exchange of Notes with the Dutch authorities. Mr TO added that as there would not be sufficient time to complete all necessary procedures before the end of this session, the Subcommittee had no objection to S for S introducing a fresh Netherlands Order in the next session to rectify the translation error.

(j) **Report of the Subcommittee on proposed senior judicial appointments**
(LC Paper No. CB(2) 2417/02-03)

90. Mr Martin LEE, Chairman of the Subcommittee, said that the Subcommittee had considered the following judicial appointments recommended by the Judicial Officers Recommendation Commission and accepted by the Chief Executive -

- (a) appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and

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The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions of the Court of Final Appeal; and

- (b) appointment of Mr Justice Geoffrey MA as the Chief Judge of the High Court, upon the expiry of the term of Mr Justice LEONG, the current Chief Judge of the High Court, on 13 July 2003.

91. Mr Martin LEE further said that the Subcommittee had also examined the following issues in the course of considering the recommended appointment of Mr Justice Geoffrey MA as the Chief Judge of the High Court

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- (a) the "fast-track" promotion of Mr Justice MA as the Chief Judge of the High Court, after his appointment as a Judge of the Court of First Instance in December 2001 and a Justice of Appeal in November 2002; and
- (b) in view of the fact that the spouse of Mr Justice MA, Madam Justice YUEN, was a Justice of Appeal, the listing and administrative arrangements in the Court of Appeal to be adopted in order to avoid any conflict of interest.

92. Mr Martin LEE added that at the request of the Subcommittee, the Administration had provided a list of the major cases previously represented or tried by the recommended appointees, the rulings in respect of these cases, and some major publications of the recommended appointees.

93. Mr Martin LEE informed members that the Subcommittee supported the recommended judicial appointments. The Subcommittee had no objection to the Administration giving notice of a motion to seek the endorsement of the Council on the appointments at the Council meeting on 2 July 2003, in accordance with Article 73(7) of the Basic Law.

94. Mr James TIEN enquired about the age of Mr Justice MA. The Legal Adviser said that he understood that Mr Justice MA was in his forties.

(k) Report of the Subcommittee on Registration of Persons (Application for New Identity Cards) Order and Registration of Persons (Application for New Identity Cards) (Repeal) Order 2003

95. Mr IP Kwok-him, Chairman of the Subcommittee, said that the Subcommittee had held its first meeting on 12 June 2003 and had requested the Administration to provide additional information on certain issues raised

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by members. Mr IP further said that to allow time for the Administration to provide a response and for the Subcommittee to report to the House Committee, he would move a motion at the Council meeting on 18 June 2003 to extend the scrutiny period of the two items of subsidiary legislation to 9 July 2003.

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VII. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 2421/02-03)

(Director of Administration's letter dated 12 June 2003 on "Proposed Priority in the Scrutiny of Bills by Members")

96. Referring to the Director of Administration (D of Adm)'s letter dated 12 June 2003, the Deputy Chairman said that the Administration had requested that priority be given to the scrutiny of the Public Officers Pay Adjustments (2004/2005) Bill and the Boundary Facilities Improvement Tax Bill.

97. Mr James TIEN said that Members belonging to the Liberal Party supported the Administration's request.

98. The Deputy Chairman said that at the House Committee meeting on 23 May 2003, Miss Margaret NG had remarked that it was not appropriate for Members to commence scrutiny of the Public Officers Pay Adjustments (2004/2005) Bill, given that the pending court judgment might have implications on the Bill. Miss NG had also pointed out that even after the Court of First Instance had delivered its judgment, there was still the question of the lodging of appeals.

99. Responding to the Deputy Chairman, the Legal Adviser said that at the House Committee meeting on 23 May 2003, Miss Margaret NG had asked the Secretariat to remind the House Committee of the court proceedings when the time came for the Bills Committee on the Bill to be activated. The Legal Adviser explained that the court judgment handed down by the Court of First Instance on 10 June 2003 was related to two applications for a series of declarations that the Public Officers Pay Adjustment Ordinance, in so far as it sought to impose a reduction in civil service pay scales, contravened individual articles of the Basic Law. Both applications were dismissed. According to the Administration, there were three other applications made in relation to the Ordinance pending disposal of them by the Court of First Instance. The Administration had not indicated how these three applications would be taken forward.

100. The Legal Adviser further explained that under section 13(2) of the High Court Ordinance, an appeal from the Court of First Instance judgment could lie to the Court of Appeal, within the time limit of 28 days, running from the date on which the judgment was sealed. The Legal Adviser added that the judgment handed down on 10 June 2003 had just been sent for sealing. If the appellant applied for legal aid, the 28-day time limit for appeal would stay, pending the determination of the application for legal aid. If the application of legal aid was refused, it was subject to appeal to the Registrar and eventually to a committee formed under the Court of Final Appeal for

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determination.

101. In response to Mr Jasper TSANG, the Legal Adviser said that the House Committee decided, at its meeting on 23 May 2003, to form a Bills Committee on the Bill and the Bills Committee would be put on the waiting list. The Legal Adviser reiterated that Miss Margaret NG had requested the Secretariat to remind Members of the court proceedings when the time came for the Bills Committee to be activated. The Legal Adviser added that the right of the legislature to legislate on a matter was not affected by pending, on-going or likely court proceedings. Given that there were now vacant Bills Committee slots, it was for the House Committee to decide whether to accede to the Administration's request for the Bill to be given priority.

102. Mr NG Leung-sing said that the proposal to adjust the pay and allowances of public officers had dragged on for some time, and the public expected an early decision on the matter. Mr NG further said that in view of the Legal Adviser's advice, he agreed that the Administration's request should be acceded to.

103. Mr James TIEN pointed out that the current proposed pay adjustments for public officers were supported by the major staff unions of the civil service. He did not envisage that there would be further applications for judicial reviews by public officers if the Bill was enacted. Mr TIEN expressed support for D of Adm's request for priority to be given to the scrutiny of the Bill.

(The Chairman resumed the chair at this juncture.)

104. Ms LI Fung-ying asked whether there would be any implications on the present Bill, if there were appeals against the judgment of the Court of First Instance and if the Court of Appeal ruled in favour of the appellants. The Legal Adviser said that the court proceedings were related to the Public Officers Pay Adjustments (2003/2004) Ordinance which had been enacted. The court judgment in respect of these appeals would not have legal effect on the present Bill. However, since the legal and constitutional issues considered in those proceedings would, to a large extent, be similar to those that might be raised in relation to the present Bill should there be judicial proceedings initiated to challenge the constitutionality of it, the result of appeals, if any, might have a bearing for Members in their consideration of the Bill. The Legal Adviser advised that the question before the House Committee was whether the Bills Committee on the Bill should commence work. It would be a matter for the Secretary for the Civil Service to consider as to when the Second Reading debate on the Bill should be resumed.

105. Members agreed to D of Adm's request that priority be given to the

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scrutiny of the Public Officers Pay Adjustments (2004/2005) Bill and the Boundary Facilities Improvement Tax Bill.

106. The Chairman said that as there were two more vacant slots, the Bills Committee on Education (Miscellaneous Amendments) Bill 2003 and the Bills Committee on Buildings (Amendment) Bill 2003 could commence work.

107. The Chairman further said that there were 12 subcommittees in action and six Bills Committees on the waiting list.

VIII. Any other business

108. There being no other business, the meeting ended at 5:47 pm.

Council Business Division 2
Legislative Council Secretariat
18 June 2003