

**立法會**  
***Legislative Council***

LC Paper No. CB(2) 3119/02-03

Ref : CB2/H/5

**House Committee of the Legislative Council**

**Minutes of the meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 3 October 2003**

**Members present :**

Hon Mrs Selina CHOW LIANG Shuk-ye, 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  
Dr Hon LUI Ming-wah, 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, JP  
Hon CHAN Kam-lam, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Hon Andrew WONG Wang-fat, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon LAU Kong-wah, JP  
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  
Dr Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon Albert CHAN Wai-yip  
Dr Hon LO Wing-lok, 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  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon CHAN Yuen-han, JP  
Hon Bernard CHAN, JP  
Hon SIN Chung-kai  
Hon LAU Chin-shek, JP  
Hon LI Fung-ying, JP  
Hon LEUNG Fu-wah, MH, JP

**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 Ray CHAN	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Ms Erin TSANG	Acting Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Connie FUNG	Assistant Legal Adviser 3
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
Miss Lolita SHEK	Senior Assistant Secretary (2)7

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**I. Matters arising**

**Import and Export (Facilitation) Bill 2003**

*(LC Paper No. LS 165/02-03)*

The Legal Adviser said that at the House Committee meeting on 27 June 2003, Members decided to defer a decision on the Import and Export (Facilitation) Bill 2003 pending the Legal Service Division's further report. He further said that the Legal Service Division had sought clarification from the Administration on some technical points and had no further comments on the drafting aspects. The correspondence exchanged with the Administration was attached to the report. He added that subject to Members' view on the policy aspects of this Bill, it was ready for resumption of Second Reading debate.

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

**II. Business arising from previous Council meetings**

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

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**Revenue (No. 3) Bill 2003**

*(LC Paper No. LS 144/02-03)*

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3. The Legal Adviser said that the Bill amended the Inland Revenue Ordinance (IRO) and the Stamp Duty Ordinance (SDO) to give effect to the tax concession proposals relating to debt instruments and unit trust schemes in the Budget for the 2003-04 financial year. The Bill proposed to amend the IRO to extend the current 50% profits tax concession for trading profits and interest income derived from qualifying debt instruments (QDIs) with an original maturity period of not less than five years to QDIs with an original maturity period of less than seven years but not less than three years. As for trading profits and interest income arising from QDIs with an original maturity period of not less than seven years, the Bill proposed to enhance the profits tax concession from 50% to 100%.

4. The Legal Adviser further said that the Bill also proposed to amend the SDO to extend the exemption applicable to overseas unit trust schemes to unit trust schemes which were Hong Kong stock. The effect of this amendment was that instruments of transfer relating to the issue of units by fund managers or redemption of units under unit trust schemes which were Hong Kong stock would be exempt from the fixed duty of \$5 under head 2(4) of the First Schedule to the SDO.

5. The Legal Adviser informed Members that the policy aspects of the Bill had not been referred to any Legislative Council (LegCo) Panel for discussion. According to the LegCo Brief, the Financial Secretary had consulted Members during the formulation of the Budget. In addition, proposals of professional bodies and the general public had been taken into account. The Legal Adviser said that the legal and drafting aspects of the Bill presented no problem, and that subject to Members' views, the Bill was ready for resumption of the Second Reading debate.

6. Members did not raise objection to the resumption of the Second Reading debate on the Bill.

**(b) Legal Service Division report on subsidiary legislation tabled in Council on 2 and 9 July 2003**

*(LC Paper No. LS 171/02-03)*

*(Letter dated 30 September 2003 from the Non-Academic Staff Association of the University of Hong Kong the Chairman of the House Committee (Chinese version only) issued vide CB(2)3109/02-03 dated 2 October 2003)*

7. The Legal Adviser said that a total of nine items of subsidiary

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legislation were gazetted between 27 June and 8 July 2003 and tabled in Council on 2 and 9 July 2003. He further said that the deadline for amending these items of subsidiary legislation was 15 October 2003, or 5 November 2003 if extended by resolution.

8. The Legal Adviser informed Members that among the nine items of subsidiary legislation covered by the report, four of them were related to consular matters. These were –

- (a) the Registration of Persons (Amendment) Regulation 2003;
- (b) the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order;
- (c) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003; and
- (d) the Consular Conventions (Application of Section 3) Order.

9. The Legal Adviser said that the above items of subsidiary legislation sought to make the relevant provisions of the following two agreements part of the domestic law of the Hong Kong Special Administrative Region (HKSAR) –

- (a) the “Consular Agreement Between the Government of the People’s Republic of China and the Government of Canada” which contained provisions entitling consular officers to protect and conserve estates and safeguard the interests in and rights of property in China of Canadian nationals, and
- (b) the Agreement Constituted by Exchange of Letters Between the Government of the People’s Republic of China and the Commission of the European Communities (EC) concerning the Maintenance of the Office of the Commission of the European Communities in the HKSAR which conferred on the Office of the Commission of EC, its accredited Heads and accredited members and their household family members certain consular privileges and immunities.

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10. The Legal Adviser informed Members that the Panel on Administration of Justice and Legal Services (AJLS Panel) had been briefed at its meeting on 28 July 2003. He further said that the Legal Service Division had sought clarification from the Administration on a few legal and drafting matters, and no difficulties in these respects had been identified.

11. The Legal Adviser said that as these four items of subsidiary legislation were related to the external affairs of the HKSAR, LegCo could only repeal them, and not amend their content. However, this restriction did not preclude LegCo from scrutinising the subsidiary legislation in detail.

12. Miss Margaret NG said that members of the AJLS Panel had not raised any queries on these four items of subsidiary legislation at the meeting on 28 July 2003 as they would be considered by the House Committee following their gazettal. Miss NG further said that as these items of subsidiary legislation concerned matters of constitutional significance, she suggested that a subcommittee should be formed to study them.

13. The Chairman proposed that a subcommittee be formed to study the above four items of subsidiary legislation. Members agreed. The following Members agreed to join: Miss Margaret NG, Mr James TO and Ms Audrey EU.

14. The Legal Adviser said that the Legal Service Division report also covered the Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003. The Amendment Statutes sought to implement the recommendations of an expert panel to reform the governance and management structure of the University. The expert panel's report was approved by the Council of the University of Hong Kong on 29 April 2003.

15. The Legal Adviser further said that the amendments concerned the following aspects -

- (a) the reduction of the size of the Council and the Senate;
- (b) the modes of appointment of the Dean of each Faculty and the Head of a Teaching Department;
- (c) the delegation to any person or committee of the Council's powers to adjudicate upon complaints from members and

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employees of the University and to deal with appeals from the Disciplinary Committee; and

(d) some other technical amendments.

16. The Legal Adviser informed Members that no difficulties relating to the legal and drafting aspects had been identified.

17. The Legal Adviser further said that the Non-Academic Staff Association of the University of Hong Kong had sent a letter to the Chairman of the House Committee expressing views on the election of a non-teaching staff member as a member of the Council of the University. The letter had been circulated to Members. The Legal Adviser added that Mrs Selina CHOW, Mr James TO, Mr LAU Chin-shek, Dr TANG Siu-tong and Mr IP Kwok-him were currently members of the Court of the University of Hong Kong and their appointment would expire on 27 October 2003.

18. Dr YEUNG Sum declared that he was a teaching staff member of the University of Hong Kong. He said that some staff members and students of the University had queried the rationale of the arrangement that the representative(s) elected from among staff and students could not represent their respective staff and student associations. Dr YEUNG suggested that a subcommittee should be formed to study the Amendment Statutes.

19. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join: Mr CHEUNG Man-kwong (as advised by Dr YEUNG Sum), Dr TANG Siu-tong, Mr Tommy CHEUNG and Mr IP Kwok-him.

20. The Chairman further proposed that to allow more time for the subcommittees to consider the four items of subsidiary legislation relating to consular matters and the Amendment Statutes, the Chairman of the House Committee should move a motion to extend the scrutiny period of these five items of subsidiary legislation to 5 November 2003. Members agreed.

21. Members did not raise any questions on the other items of subsidiary legislation.

**III. Legal Service Division report on subsidiary legislation gazetted between 11 July 2003 and 27 September 2003**

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*(LC Paper No. LS 172/02-03)*

22. The Legal Adviser said that a total of 20 items of subsidiary legislation were gazetted between 11 July and 27 September 2003, and they would be tabled at the next Council meeting. He further said that no difficulties relating to the legal and drafting aspects of these items of subsidiary legislation had been identified.

23. The Legal Adviser informed Members that the deadline for amending these 20 items of subsidiary legislation was 5 November 2003, or 26 November 2003 if extended by resolution.

24. The Legal Adviser added that the Rules of the High Court (Amendment) Rules 2003 (Repeal) Rules were made under section 54 of the High Court Ordinance (Cap. 4) by the Rules Committee of the High Court. By these Rules, the Rules of the High Court (Amendment) Rules 2003 were repealed.

25. The Legal Adviser said that a subcommittee had been formed to study the Amendment Rules which were gazetted on 20 June 2003. In view of the concerns expressed by the subcommittee members, the Rules Committee had decided to repeal the Amendment Rules. The Rules Committee would reconsider the matter in due course and take into account the concerns of the subcommittee. He added that the subcommittee had provided a report on its deliberations under agenda item VI(a) below.

26. Members did not raise any questions on these items of subsidiary legislation.

**IV. Business for the Council meeting on 8 October 2003**

**(a) Questions**

*(LC Paper No. CB(3) 7/03-04)*

27. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 8 October 2003.

**(b) Bills – First Reading and moving of Second Reading**

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

**(c) Bills – resumption of debate on Second Reading, Committee**



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**Stage and Third Reading**

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**Supplementary Appropriation (2002-2003) Bill**

29. The Chairman said that at the House Committee meeting on 20 June 2003, Members did not raise objection to the resumption of the Second Reading debate on the Bill. The Chairman further said that the notice given by the Secretary for Financial Services and the Treasury (SFST) for the resumption of the Second Reading debate on the Bill was a few days late due to some technical reasons. SFST had requested the President to waive the notice requirement and would like to seek the House Committee's support for his request. Members did not raise objection to SFST's request.

**(d) Government motion**

**Proposed resolution to be moved by the Secretary for Financial Services and the Treasury under section 3(2) of the Air Passenger Departure Tax Ordinance**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 6/03-04 dated 19 September 2003.)*

*(LC Paper No. LS 170/02-03)*

30. The Legal Adviser said that the SFST had given notice to move the proposed resolution to increase the amount of air passenger departure tax specified in the First Schedule from \$80 to \$120, and the proposed increase would take effect on the day immediately following the expiry of three months from the date on which the resolution was passed by LegCo. He added that the proposed resolution was to give legal effect to implement the proposal in paragraph 92 of the 2003-04 Budget Speech.

31. The Legal Adviser informed Members that the Administration had clarified that the proposed increase in the air passenger departure tax was intended to apply to aeroplane and helicopter passengers departing from Hong Kong via the Hong Kong International Airport or a heliport as specified in Schedule 3. The Legal Adviser said that no difficulties in relation to the legal and drafting aspects of the resolution had been identified.

32. Mr James TO asked whether it was appropriate for the commencement date of the proposed resolution to be so stipulated, or whether the commencement date should be stipulated in another item of subsidiary legislation after the proposed resolution had been passed by LegCo. Mr TO further asked why the Administration had proposed that

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the increase in air passenger departure tax should commence three months after the proposed resolution was passed and not earlier, given that the purpose of the proposal was to raise more revenue. Mr TO queried whether such an arrangement was in order, and whether there were precedents.

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33. The Legal Adviser responded that the appointment of a commencement date in SFST's proposed resolution was within his authority. According to the Interpretation and General Clauses Ordinance (Cap. 1), subsidiary legislation with a specified commencement date should come into operation on that date. He added that if the commencement date was not stipulated in the resolution, it would take effect from the day of gazettal of the resolution after its passage through the Council.

34. The Chairman said that the Administration might have estimated that the necessary preparatory work would take three months to complete. It had therefore appointed such a commencement date in the proposed resolution. The Chairman added that if Members considered it necessary to form a subcommittee to study the proposed resolution, the Administration would have to withdraw the notice for moving the proposed resolution.

35. Mr Howard YOUNG informed Members that the air passenger departure tax was collected through the airlines and they needed time to adjust their computer systems for the collection of the revised amount. He did not consider it necessary to set up a subcommittee to study the proposed resolution.

36. Mr James TO said that he had no intention to request the Administration to withdraw the notice for moving the proposed resolution. However, his view was that the Administration should reconsider whether the commencement date was appropriate.

37. The Chairman requested the Legal Service Division to seek clarification with the Administration on the queries raised by Mr James TO. The Legal Adviser said that the Administration would be requested to provide a response before 8 October 2003.

(e) **Members' motions**

(i) **Motion on "Calling on the Chief Executive Mr TUNG Chee-hwa to step down"**

*(Wording of the motion issued vide LC Paper No. CB(3) 9/03-04 dated 24 September 2003.)*

(ii) **Motion on "Facing up to the transport needs of people with disabilities"**

*(Wording of the motion issued vide LC Paper No. CB(3) 8/03-04 dated 23 September 2003.)*

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38. The Chairman said that the above motions would be moved by Ms Emily LAU and Mr LEUNG Yiu-chung respectively and the wording of the motions had been issued to Members.

**V. Business for the Council meeting on 15 October 2003**

**(a) Questions**

*(LC Paper No. CB(3) 13/03-04)*

39. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 15 October 2003.

**(b) Bills – First Reading and moving of Second Reading**

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

**(c) Government motion**

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

**(d) Members' motions**

**(i) Motion to be moved by Hon Michael MAK Kwok-fung**

42. The Chairman said that Mr Michael MAK had been allocated a debate slot.

**(ii) Motion on “Boundary crossing arrangements for Mainlanders visiting Hong Kong individually”**

*(Wording of the motion issued vide LC Paper No. CB(3) 16/03-04 dated 2 October 2003.)*

43. The Chairman said that the above motion would be moved by Ms Miriam LAU and the wording of the motion had been issued to Members.

44. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 8 October 2003.

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**VI. Report of Bills Committee and subcommittee**

**(a) Report of the Subcommittee on Rules of the High Court  
(Amendment) Rules 2003**

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*(LC Paper No. CB(2) 2971/02-03)*

45. Miss Margaret NG, Chairman of the Subcommittee, briefed Members on the report of the Subcommittee. She explained that the main purpose of the Amendment Rules was to deal with the discovery of a record or transcript of court proceedings prepared for a party's use at his own expense.

46. Miss Margaret NG said that the Subcommittee had noted that the Amendment Rules had already come into effect on the day on which they were published in the Gazette, i.e. 20 June 2003. The Judiciary Administration had apologized for its oversight in allowing the Amendment Rules to come into effect before the expiry of the scrutiny period by LegCo.

47. Miss Margaret NG further said that in its deliberations, the Subcommittee had found that there were problems with the Amendment Rules which needed to be addressed. These included, inter alia –

- (a) in the event of refusal of a party to the proceedings to give consent to make available to the court records or transcripts of proceedings commissioned by a party, or refusal or inability of a party to share the costs of production of the records or transcripts, the court would be unable to have access to the records or transcripts which were a useful tool for the efficient management and resolution of the case. This would defeat the purpose of the Amendment Rules; and
- (b) the Amendment Rules, in its existing formulation, appeared to also cover transcripts produced by the Judiciary's Digital Audio Recording and Transcript Production Services, which was contrary to the intention of the Judiciary Administration.

48. Miss Margaret NG said that in view of the concerns raised by the Subcommittee, the Rules Committee of the High Court had arranged to repeal the Amendment Rules and would reconsider the matter in due course.

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**(b) Report of the Subcommittee on proposed resolution under section 7 of the Factories and Industrial Undertakings Ordinance**

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*(LC Paper No. CB(2) 3080/02-03)*

49. Ms Cyd HO, Chairman of the Subcommittee, explained that the proposed resolution sought to amend four sets of subsidiary legislation to hold, in addition to principal contractors, other contractors and sub-contractors who had direct control over any construction work responsible for the various statutory duties. Ms HO added that the existing responsibility of principal contractors under these four sets of subsidiary legislation would not be reduced.

50. Ms HO said that the proposed resolution also sought to remove the ambiguity of the provision containing the words “to the satisfaction of the Commissioner” in the Construction Sites (Safety) Regulations. Ms HO further said that members had suggested that a consistent drafting approach should be adopted in regulations 38A(3) and 38(A)4 by making reference to the term “hazardous conditions” in regulation 38A(1), instead of still using the terms “safe” and “unsafe”.

51. Ms HO informed members that the Subcommittee had recommended that the review of legislative provisions which contained the drafting formula “to the satisfaction” of an enforcement agency be followed up by the AJLS Panel.

52. Miss Margaret NG, Chairman of the AJLS Panel, said that the Panel would follow up the matter.

**(c) Report of the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002**

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*(LC Paper No. CB(2) 3003/02-03)*

53. Miss Margaret NG, Chairman of the Subcommittee, explained that the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 was to give effect to the United Nations Security Council Resolution (UNSCR) 1390, which sought to continue, amend and terminate certain sanctions imposed against the Taliban under UNSCR 1267 and against Usama bin Laden, the Al-Qaida Organization and the Taliban under UNSCR 1333. As regards the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002, the purpose was to suspend the operation of sections 4D and 4E of the

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United Nations (Angola) Regulation which imposed certain measures on the National Union for the Total Independence of Angola under UNSCR 1127.

54. Miss NG pointed out that both Regulations were made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) by the Chief Executive (CE) on the instruction of the Ministry of Foreign Affairs (MFA) of the People's Republic of China (PRC) and after consultation with the Executive Council. The two Regulations were not required to be laid before LegCo and were not subject to amendment by the Council, as section 3(5) of the Ordinance provided that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) would not apply to regulations so made.

55. Miss NG said that the deliberations of the Subcommittee were detailed in the report. Miss NG further said that the Subcommittee had recommended that the following conclusions of the Subcommittee be conveyed to the Chief Secretary for Administration (CS) for a response –

- (a) the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 was ultra vires and therefore void. This was because “sanction” was defined in the United Nations Sanctions Ordinance as “mandatory measures decided by the Security Council of the United Nations, implemented against a place outside the People's Republic of China” whereas the Regulation imposed sanctions against “persons” instead of a place;
- (b) in the case of the United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002, the Administration should admit that it was wrong to have used administrative means to give effect to the instruction given by the MFA of the PRC to implement the measures of UNSCR 1412 when the United Nations Sanctions (Angola) Regulation was still in force;
- (c) the United Nations Sanctions Ordinance should be amended to extend its scope to cover all kinds of United Nations sanctions, irrespective of whether they were targeted at persons or places, and to provide LegCo with the power to scrutinise regulations made thereunder; and
- (d) when making a regulation under the United Nations Sanctions Ordinance in future, the relevant instruction

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given by the MFA of the PRC should be provided to enable Members to assess whether the regulation had given effect to the relevant instruction in full.

56. The Chairman proposed that the Subcommittee's conclusions be conveyed to CS in writing, in view of the complexity of the issues raised by the Subcommittee. The Chairman added that the report, including the Legal Service Division's paper setting out its legal advice in relation to the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002, should be provided to CS to enable him to better understand the Subcommittee's views. Members agreed.

**VII. Position on Bills Committees/subcommittees**

*(LC Paper No. CB(2) 3091/02-03)*

*(Letter dated 2 October 2003 from the Secretary for Security on the National Security (Legislative Provisions) Bill issued vide LC Paper No. CB(2) 3109/02-03 dated 2 October 2003)*

57. The Chairman said that there were 15 Bills Committees and four subcommittees in action, and four Bills Committees on the waiting list.

58. The Chairman drew Members' attention to the Secretary for Security's (S for S's) letter dated 2 October 2003 which informed the House Committee that he would not give notice to resume the Second Reading debate on the National Security (Legislative Provisions) Bill within the current term, with the result that the Bill would lapse at the end of this term. The Chairman pointed out that the slot of the Bills Committee on the Bill had already been allocated to another bill at the House Committee meeting on 27 June 2003. The Bills Committee could now be formally dissolved. Members agreed.

59. Mr James TO said that CE made a public announcement on 5 September 2003 that the Administration had decided to withdraw the Bill. Mr TO further said that withdrawing the Bill was not the same as not resuming the Second Reading debate on the Bill. He expressed concern that LegCo might be blamed for not completing the scrutiny of the Bill as the Bills Committee had not discussed the three sets of Committee Stage amendments (CSAs) proposed by the Administration on 5 July 2003. Mr TO considered that there was no guarantee that the Administration would not subsequently change its mind and decide to resume the Second Reading debate on the Bill in the current term. He suggested that the Chairman of the House Committee should request the Administration to formally withdraw the Bill under the Rules of



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Procedure.

60. The Legal Adviser explained that under Rule 64 of the Rules of Procedure, the Member or public officer in charge of a bill could, by announcement in Council at the beginning of proceedings for its Second or Third Reading, withdraw or postpone the bill. The Legal Adviser further explained that as the Second Reading debate on the National Security (Legislative Provisions) Bill had already commenced and was now being adjourned, the Bill could only be withdrawn at the beginning of its Third Reading, i.e. after the Bill had passed through Second Reading and Committee Stage, in accordance with Rule 64.

61. In response to the Chairman's enquiry on whether there were precedents, the Legal Adviser said that Members might wish to make reference to the case of the Evidence (Amendment) Bill 1996. The Bills Committee on the Bill reported to the House Committee on 8 November 1996 and Members agreed that the Second Reading debate on the Bill should resume on 27 November 1996. However, the Administration wrote to the Clerk to the Bills Committee on 26 November 1996 that it needed more time to consider the appropriate CSAs and would further review the date of resumption of the Second Reading debate on the Bill. The Administration subsequently notified the Clerk on 15 May 1997 by letter that it was the Administration's intention not to resume the Second Reading debate on the Bill and it would accordingly lapse at the end of the term.

62. The Legal Adviser further explained that if the Second Reading debate on the National Security (Legislative Provisions) Bill did not resume within the current term, the Bill would lapse at the end of the term in accordance with Rule 11(4) of the Rules of Procedure and section 9(4) the Legislative Council Ordinance (Cap. 542). He added that should the Administration decide to resume the Second Reading debate on the Bill at a later stage, it would have to first consult the Chairman of the House Committee on the date of resumption, in accordance with Rule 54.

63. In response to Mr James TO's question on whether it would be for CE or S for S to withdraw the Bill, the Legal Adviser explained that only the Member or public officer in charge of a bill could withdraw the bill under Rule 64.

64. Mr James TO asked whether there were ways to prevent the Administration from resuming the Second Reading debate on the Bill within the current term, should it decide to change its mind. The Legal

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Adviser explained that the Rules of Procedure had laid down the procedures for resumption of Second Reading debate on a bill. The procedures were formulated with a view to facilitating the Member or public officer in charge of a bill to complete the legislative process for the enactment of a bill, and there were no procedural restrictions to prevent the Member or public officer from giving notice of resumption.

65. The Legal Adviser further explained that CE's public announcement on 5 September 2003 and S for S's letter dated 2 October 2003 were not legally binding. However, from a constitutional point of view, they contained statements of government intention and conduct on an issue of public importance. It would be possible for these statements to be referred in legal proceedings if such statements were relevant to the proceedings.

66. Miss Margaret NG said that Rule 64 was not applicable to the present case as it would not make sense to resume the Second Reading debate on the Bill for the purpose of withdrawing it. She suggested that the Committee on Rules of Procedure (CRoP) should be requested to study whether Rule 64 should be amended to cover other situations, such as the present one involving the National Security (Legislative Provisions) Bill.

67. Mr James TO asked whether any future amendment to Rule 64 could be applied retrospectively to the National Security (Legislative Provisions) Bill. The Legal Adviser responded that matters before the Council or its committees were bound by the prevailing set of Rules of Procedure.

68. Miss Margaret NG said that as CRoP would need time to thoroughly and carefully conduct the review, it was unlikely that the review could be completed within a short period of time.

69. Ms Emily LAU said that Rule 64 should be reviewed as soon as possible, given that some other bills might also have to be withdrawn in the current term.

70. Mr James TO expressed concern that the Administration might someday claim that it was not able to resume the Second Reading debate on the Bill because the Bills Committee had not discussed the three sets of CSAs proposed by the Administration on 5 July 2003. He suggested that the Administration should be requested to state clearly that it was not necessary for the Bills Committee to consider these CSAs.

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71. Assistant Secretary General 3 informed Members that the Administration had withdrawn its notice to resume the Second Reading debate on the Bill on 9 July 2003. He added that S for S had clearly stated in his letter that the Administration would not resume the Second Reading debate on the Bill within the current term. Moreover, the Administration had not given notice to move the three sets of CSAs referred to by Mr James TO.

72. Miss Margaret NG said that although the three sets of CSAs had been circulated to members of the Bills Committee, they were not discussed at the meeting of the Bills Committee on 23 July 2003. She did not think that the Administration would someday blame LegCo for not studying the three sets of amendments with the result that the Administration could not resume the Second Reading debate on the Bill. Miss NG added that should the Administration make such a claim, it would become a laughing-stock.

73. The Chairman concurred with Miss NG. The Chairman added that CE had publicly announced that the Bill would be withdrawn and S for S' letter reiterated the Administration's position very clearly. Should the Administration decide to change its mind in the future, it would have to explain and be answerable to the public.

74. The Chairman proposed that CRoP be requested to review Rule 64 and report its recommendations to the House Committee. Members agreed.

75. Referring to List E of the position report of Bills Committees and subcommittees, Miss Margaret NG said that the scrutiny of the Companies (Corporate Rescue) Bill had been held in abeyance to allow time for the Administration to conduct consultation on, and work out the details of, a new proposal. She informed Members that the Administration had recently issued a consultation paper on the proposal to the parties concerned.

**VIII. Determination of the date for election of Members of The Legislative Council Commission**

*(LC Paper No. AS 317/02-03)*

76. Members agreed that the election of members of The Legislative Council Commission should be held at the House Committee meeting on 17 October 2003.

Action

**IX. Election of the Chairman and Deputy Chairman of the House Committee for the 2003-2004 session**

77. The Chairman called for nomination for the Chairman of the House Committee. Ms Miriam LAU was nominated by Mr IP Kwok-him and the nomination was seconded by Dr YEUNG Sum and Mr CHAN Kam-lam. Ms LAU accepted the nomination.

78. As there was no other nomination, the Chairman declared Ms Miriam LAU elected as Chairman of the House Committee for the 2003-2004 session.

79. The Chairman called for nomination for the Deputy Chairman of the House Committee. Mr Fred LI was nominated by Dr YEUNG Sum and the nomination was seconded by Mr LAU Ping-cheung. Mr Fred LI accepted the nomination.

80. As there was no other nomination, the Chairman declared Mr Fred LI elected as the Deputy Chairman of the House Committee for the 2003-2004 session.

**X. Any other business**

81. Miss Margaret NG and Mr Fred LI proposed and Members passed a vote of thanks to the Chairman for guiding the work of the House Committee so ably in the last three legislative sessions. The Chairman thanked Members for their support and cooperation during her tenure as Chairman of the House Committee.

82. The Chairman announced that the next House Committee meeting would be held on 10 October 2003 at 2:30 pm.

83. There being no other business, the meeting ended at 3:40 pm.