

立法會
Legislative Council

LC Paper No. CB(2) 508/03-04

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 8th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 28 November 2003**

Members present :

Hon Miriam LAU Kin-yee, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
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 NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
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, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum

Dr Hon David CHU Yu-lin, JP
Dr Hon LUI Ming-wah, JP
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi

Mrs Justina LAM Clerk to the House Committee

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
Mrs Vivian KAM	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
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Lolita SHEK	Senior Assistant Secretary (2)7

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I. Confirmation of the minutes of the 7th meeting held on 21 November 2003
(LC Paper No. CB(2) 418/03-04)

The minutes were confirmed.

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)

Hong Kong Sports Development Board (Repeal) Bill 2003

(LC Paper No. LS 13/03-04)

(Letter dated 23 November 2003 from the Amenities Officers Association and the Assistant Leisure Services Manager II Association to the Chairman of the House Committee (LC Paper No. CB(2) 457/03-04(01))

(Letter dated 28 November 2003 from the Director of Administration on "Proposed Priority in the Scrutiny of Bills By Members (LC Paper No. CB(2) 483/03-04(01))

2. The Legal Adviser said that the main objects of the Bill were to repeal the Hong Kong Sports Development Board Ordinance, to dissolve the Hong Kong Sports Development Board (HKSDB) and the Hong Kong Sports Institute Trust Fund Committee of Trustees established under the Ordinance, and to close the Hong Kong Sports Institute Trust Fund.

3. The Legal Adviser further said that the Panel on Home Affairs had been briefed on 14 July 2003 on the new administrative structure for sports development. The Panel also held a special meeting on 29 July 2003 to meet with deputations.

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4. The Legal Adviser added that a written submission from the Amenities Officers Association and the Assistant Leisure Services Manager II Association had been received and circulated to Members.

5. The Legal Adviser advised that as the Bill contained important proposals to revise the policies on development of sports and physical recreation, and there were concerns about the restructuring arrangements, Members might wish to form a Bills Committee to study the Bill in detail.

6. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Mr Fred LI, Mr NG Leung-sing, Mr Andrew WONG, Mr Bernard CHAN and Mr Andrew CHENG (as advised by Mr Fred LI).

7. The Chairman referred Members to Director of Administration's letter dated 28 November 2003 requesting that priority be given to the scrutiny of the Bill. The Chairman said that if Members agreed to the request, the Bills Committee could start work immediately as there would be a vacant slot after the Bills Committee on Public Officers Pay Adjustments (2004/2005) Bill had reported under agenda item V below. Members agreed.

(b) **Legal Service Division report on subsidiary legislation gazetted on 21 November 2003 and tabled in Council on 26 November 2003**
(*LC Paper No. LS 17/03-04*)

8. The Legal Adviser said that there were three items of subsidiary legislation, including one Commencement Notice, gazetted on 21 November 2003 and tabled in Council on 26 November 2003.

9. The Legal Adviser explained that the purpose of the Summary Disposal of Complaints (Solicitors) Rules was to establish an alternative disciplinary system under which a fixed penalty would be imposed upon solicitors who pleaded guilty to certain disciplinary offences, without having to proceed to a full hearing of the Solicitors Disciplinary Tribunal.

10. The Legal Adviser said that the relevant amendments to the Legal Practitioners Ordinance (Cap. 159) had been discussed by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001. He further said that a letter from the Law Society of Hong Kong explaining the Rules had been circulated to the Panel on Administration of Justice and Legal Services (AJLS Panel).

11. The Legal Adviser added that no difficulties had been observed in the drafting or legal aspects of the Rules.

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12. Miss Margaret NG said that the AJLS Panel considered that the Rules should be studied by a subcommittee. Miss NG added that the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001 also recommended that a subcommittee should be formed to study the Rules in detail when they were gazetted and tabled in Council. Miss NG suggested that a subcommittee be formed.

13. The Chairman proposed that a subcommittee be formed to study the Rules. Members agreed. The following Members agreed to join: Miss Margaret NG, Ms Miriam LAU and Ms Audrey EU.

14. Members did not raise any queries on the other two items of subsidiary legislation.

15. The Chairman said that the deadline for amending these items of subsidiary legislation was 17 December 2003, or 14 January 2004, if extended by resolution of the Council.

III. Further business for the Council meeting on 3 December 2003

(a) Questions

(LC Paper No. CB(3) 194/03-04)

16. The Chairman said that Mr Michael MAK and Mr Abraham SHEK had replaced their previous oral questions.

(b) Members' motions

(Dr Hon YEUNG Sum's letter dated 27 November 2003 to the Chairman of the House Committee (LC Paper No. CB(2) 483/03-04(02))

17. The Chairman said that she had received a letter from Dr YEUNG Sum dated 27 November 2003 requesting for support of the House Committee, under rules 13(a) and 14(f) of the House Rules (HR), for him to move a motion relating to appointed membership of District Councils (DCs) at the Council meeting on 3 December 2003.

18. The Chairman explained that HR13(a) provided that while not more than two debates initiated by Members should be held at each regular Council meeting, more than two such debates could be allowed by the President under special circumstances upon the recommendation of the House Committee. The Chairman said that as two debates on Members' motions had already been scheduled for the Council meeting on 3 December 2003, Dr YEUNG's application, if allowed by the President, would mean that there would be three

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debates on Members' motions at that Council meeting. The Chairman further said that HR14(f) provided that, with the agreement of the House Committee, Members could be given priority in respect of the allocation of slots for debates on urgent, important and topical issues.

19. Mr CHEUNG Man-kwong said that there was urgency in debating Dr YEUNG's proposed motion. Mr CHEUNG pointed out that while over one million voters cast their votes in the DC election held on 23 November 2003, the Chief Executive (CE) alone could appoint up to 102 persons to DCs. There was increasing demand from the community that appointed membership of DCs should be abolished or reduced to the minimum. Members belonging to the Democratic Party (DP) considered that CE should respect the choices of the one million voters who had cast their votes in the DC election, and that CE should not attempt to alter the composition of the DCs, which was the result of the DC election, through his appointments. Mr CHEUNG further said that it was necessary for a debate to be held as soon as possible to enable Members to give their views on the issue to the Administration. Mr CHEUNG urged Members to support Dr YEUNG's application to move his motion for debate at the Council meeting on 3 December 2003.

20. Miss Margaret NG, Mr Andrew WONG, Mr LEE Cheuk-yan, Ms Emily LAU, Mr Frederick FUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai and Mr Andrew CHENG agreed that there was urgency in debating Dr YEUNG's motion. They considered it necessary for Members to clearly express their views on the issue at the earliest opportunity, so as to assist CE and the Administration in making the right decision regarding appointed membership of DCs.

21. Referring to the wording of Dr YEUNG's proposed motion, Miss Margaret NG sought clarification on how the President would decide on an application for an additional motion debate at a Council meeting, if only part of the motion was considered to be of an urgent nature. The Secretary General responded that the President would consider the motion as a whole and would not just look at a part or parts of the motion.

22. Mr Andrew WONG said that the purpose of appointed membership of DCs in the early 1990s was to provide a balanced representation of the views in the districts, and that appointed members were mostly professionals. Mr WONG further said that appointed membership was abolished by the former Governor Christopher Patten but was re-introduced by CE after 1 July 1997. He considered that members of political parties should not be appointed to DCs under the current system.

23. Mr Andrew WONG informed Members that a special joint meeting of the Panel on Constitutional Affairs and the Panel on Home Affairs had been

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scheduled for 8 December 2003 to discuss the issue of appointed membership of DCs. However, he had no objection to Dr YEUNG Sum's request for holding a debate on the issue at the Council meeting on 3 December in view of the urgency of the matter.

24. Mr Albert HO said that the subject matter of Dr YEUNG's proposed motion was of public importance. DCs were important channels for the Administration to gauge public views on major issues or areas of concern such as constitutional reform after 2007. DC members also elected their own representative to the Legislative Council (LegCo). The appointment of members by CE would alter the composition of DCs which was the result of the DC election on 23 November 2003, and affect the outcome of public consultation on such important matters. Mr HO considered that Members should have an opportunity to express their concern that CE should not attempt to alter the composition of DCs through the appointment of certain persons to DCs.

25. Mr Andrew WONG asked whether Dr YEUNG Sum would consider the option of an adjournment debate under Rule 16(1) and (2) of the Rules of Procedure, since such a motion could be moved without notice and did not require the recommendation of the House Committee. Dr YEUNG Sum responded that he had considered the option but did not find it appropriate because the wording of such a motion could not be couched in express terms.

26. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for Betterment of Hong Kong (DAB) would not support Dr YEUNG Sum's request. Mr IP pointed out that Members had already given their views on whether the appointed seats of DCs should be abolished, during the debate on Mr James TO's motion on "Election of the Chief Executive and all Members of the Legislative Council by universal suffrage" held at the Council meeting on 12 November 2003. Mr IP further said that it was the normal arrangement for appointed members of DCs to be announced by CE after the general election had been held. He did not see any special or urgent grounds for supporting Dr YEUNG's request.

27. Mr Martin LEE said that members of DP would definitely not accept appointed membership of DCs. Mr LEE asked whether Mr IP Kwok-him, who was returned by the DC Functional Constituency, had consulted both elected and appointed DC members on the issue of appointed membership of DCs, and whether his views represented those of the DC members.

28. Mr IP Kwok-him responded that although he had not specifically sought the views of all DC members, the issue of appointed membership of DCs had been discussed by DCs, and members held divergent views on the matter.

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29. Mr NG Leung-sing said that he had reservations about Dr YEUNG using the election turnout rate as a reason for seeking an additional debate slot at a Council meeting. Mr NG further said that the one million voters who cast their votes in the DC election on 23 November 2003 included those who supported appointed membership of DCs. It could not be argued that appointed membership of DCs should be abolished on the ground that more than one million people had cast their votes.

30. Mr NG pointed out that the motion proposed by Dr YEUNG Sum did not have any legislative or binding effect. Even if the motion was debated and passed at the Council meeting on 3 December 2003, it could not stop CE from appointing members to DCs in accordance with the law. Mr NG said that it would be more appropriate for the issue on appointed membership of DCs to be discussed at the joint Panel meeting on 8 December 2003. He added that Members should be careful in setting a precedent for allocation of a third debate slot for Members' motions without legislative effect at Council meetings.

31. Mr HUI Cheung-ching agreed with Mr NG that it would be more appropriate for the issue on appointed membership of DCs to be discussed at the joint Panel meeting on 8 December 2003, instead of allocating an additional slot to Dr YEUNG's motion for debate at the Council meeting on 3 December 2003.

32. Dr YEUNG Sum said that the record high turnout rate of 44% in the DC election on 23 November 2003 had clearly reflected the strong public demand for full democracy. Dr YEUNG further said that many of the appointed DC members were in fact members of political parties or those who were defeated in election. Dr YEUNG stressed that there was urgency for Members to clearly state their position on the matter at a motion debate.

33. Miss Margaret NG and Mr LEE Cheuk-yan reiterated their support for Dr YEUNG's request. They considered that even though the motion had no binding effect on the Administration, it was in the public interest to provide an opportunity for Members to express their views on such an important issue before the announcement by CE of the appointed members of DCs.

34. Mr James TIEN said that appointment of DC members by CE was provided for in the law and there was nothing new about the appointment system. Mr TIEN further said that the Administration had not sought to increase the number of appointed seats or indicated that it would appoint those who had been defeated in the DC election on 23 November 2003. There was therefore no urgency for Dr YEUNG's motion to be debated at the Council meeting on 3 December 2003. Mr TIEN added that the Liberal Party supported appointed membership of DCs, and that the issue should be discussed

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at the joint Panel meeting on 8 December 2003.

35. Mrs Selina CHOW said that it was reported in the press that a pro-democracy coalition had been formed on 27 November 2003 to campaign for the abolition of appointed seats in DCs. Mrs CHOW added that the motion proposed by Dr YEUNG Sum might be part of the campaign of the coalition.

36. Mr LEE Cheuk-yan said that Members who had been offered appointments to the second term DCs should declare interest at the meeting, as they would receive a monthly honorarium and allowance as DC members. Mr LEUNG Yiu-chung added that DAB had benefited from the appointed membership system in the past, and the Members concerned should declare interest at the meeting.

37. Mr Jasper TSANG responded that DAB had not been approached regarding the appointment of its members to the second term DCs. Mr TSANG said that 13 members of DAB had accepted appointments to the first term DCs. However, some of them were not DAB members at the time when they were appointed.

38. Mr Henry WU declared that he was currently an appointed DC member, and that he had not been approached by the Administration regarding appointment to the second term DC.

39. Mr Andrew WONG said that he was not a member of the pro-democracy coalition referred to by Mrs Selina CHOW, and should he be approached for appointment to Shatin DC, he would not accept the appointment.

40. Mr NG Leung-sing said that it was not necessary for him to declare interest because he had not been approached by the Administration, and he would not accept an appointed membership of DC.

41. Mr Andrew CHENG said that as DC members received a monthly honorarium and allowance, Members who would accept appointments to the second term DCs should declare such pecuniary interest. Mr James TO asked whether it was necessary for serving appointed DC members, such as Mr Tommy CHEUNG and Mr Henry WU, to withdraw from voting on Dr YEUNG's request.

42. The Legal Adviser explained that Rule 84 of the Rules of Procedure stipulated that "a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy". The Legal Adviser said that the question before the House Committee was whether Dr YEUNG's application should be supported

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by the House Committee, and not whether Dr YEUNG's motion should be supported. The Chairman advised that in view of the Legal Adviser's explanation, both Mr Tommy CHEUNG and Mr Henry WU could vote on Dr YEUNG Sum's request.

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43. Mr CHEUNG Man-kwong said that as some Members had expressed concern that views on whether the appointed seats of DCs should be abolished had been expressed during the debate on Mr James TO's motion at the Council meeting on 12 November 2003, the wording of Dr YEUNG's proposed motion could be revised, as follows -

"鑒於 11 月 23 日有過百萬名市民在區議會選舉中投票，行政長官委任區議員，等同改變市民的投票結果，本會促請行政長官根據法例委任最少的區議員，尊重過百萬區議會投票選民的選擇。"

Dr YEUNG Sum agreed to the revised wording proposed by Mr CHEUNG.

44. The Chairman put Dr YEUNG's request for the House Committee to support his application for the above motion to be debated at the Council on 3 December 2003 to vote. The result was that 22 Members voted in favour of the request, and 20 Members voted against the request. The Chairman declared that the House Committee supported Dr YEUNG's application.

IV. Business for the Council meeting on 10 December 2003

(a) Questions

(LC Paper No. CB(3) 195/03-04)

45. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 10 December 2003.

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

(i) Bankruptcy (Amendment) Bill 2003

(ii) Clearing and Settlement Systems Bill

46. The Chairman said that the Administration had given notice to introduce the above two Bills into the Council on 10 December 2003, and they would be considered by the House Committee at its meeting on 12 December 2003.

(c) Government motion

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

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(d) **Members' motions**

(i) **Motion on "Repercussions of the Severe Acute Respiratory Syndrome on employees compensation insurance".**

(Wording of the motion issued vide LC Paper No. CB(3) 204/03-04 dated 27 November 2003.)

(ii) **Motion on "Supporting the middle class"**

(Wording of the motion issued vide LC Paper No. CB(3) 205/03-04 dated 27 November 2003.)

48. The Chairman said that the above motions would be moved by Mr Bernard CHAN and Dr David CHU respectively, and the wording of their motions had been issued to Members.

49. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 3 December 2003.

V. Report of Bills Committees and subcommittees

Report of the Bills Committee on Public Officers Pay Adjustments (2004/2005) Bill

(LC Paper No. CB(1) 428/03-04)

50. Mr TAM Yiu-chung, Chairman of the Bills Committee, said that the Bills Committee had no objection to the Administration's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism. Mr TAM further said that the Bills Committee had examined the following issues -

- (a) the need for enactment of legislation to effect pay reductions in 2004 and 2005;
- (b) impact of the Bill on future civil service pay adjustments; and
- (c) exclusion of judicial officers from the application of the Bill.

51. Mr TAM Yiu-chung added that the Bills Committee had no objection to the Administration's proposed Committee Stage amendments (CSAs) and its proposal to resume the Second Reading debate on the Bill on 10 December 2003.

52. Members did not raise objection to the resumption of the Second Reading debate on the Bill. The Chairman reminded Members that the

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deadline for giving notice of CSAs was Monday, 1 December 2003.

VI. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 450/03-04)

53. The Chairman said that there were 14 Bills Committees and five subcommittees in action, as well as four Bills Committees on the waiting list.

54. The Chairman further said that Members had agreed to give priority to the scrutiny of the Sports Development Board (Repeal) Bill 2003 under agenda item II(a) above. The relevant Bills Committee could start work immediately as there was a vacant slot.

VII. Report on duty visit to study the food regulatory systems in Australia by the delegation of the Panel on Food Safety and Environmental Hygiene

(LC Paper No. CB(2) 405/03-04)

55. Mr Fred LI, Chairman of the Panel and leader of the delegation, said that the delegation visited Canberra and Melbourne from 20 to 25 July 2003 to study the food regulatory systems in Australia. A detailed report on the visit was now provided for Members' reference.

VIII. Any other business

Hon Emily LAU Wai-hing's letter dated 25 November 2003 to the Chairman of the House Committee

(LC Paper No. CB(2)457/03-04(02))

56. Ms Emily LAU said that she had received letters from members of the public expressing concern about recent media reports alleging improper use of the operating expenses reimbursements by LegCo Members. Ms LAU further said that these members of the public considered that if there was no mechanism for monitoring Members' use of public funds, the credibility of LegCo would be undermined.

57. Ms LAU said that she hoped there would be a forum to further discuss the matter, such as whether a mechanism should be established to monitor Members' use of their operating expenses reimbursements, and how complaints in this regard should be dealt with. Ms LAU suggested that the LegCo Secretariat should prepare an information paper to facilitate discussion of the matter by Members at a future House Committee meeting.

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58. Mr Albert HO, Miss Margaret NG and Dr Eric LI supported Ms LAU's suggestion. Mr Albert HO said that LegCo should not, on the one hand, be very strict with the Administration regarding the use of public funds and, on the other hand, decline to do anything about allegations of improper use of public funds by its own Members. Mr HO considered that a better system should be put in place, instead of solely relying on the present "honour system" or monitoring by the public. He suggested that independent persons could be appointed to conduct investigation into allegations in order to uphold the credibility of LegCo.

59. Dr Eric LI said that although the Secretary General was the Controlling Officer of the resources allocated to The Legislative Council Commission, he was not in a position to respond to public queries on the improper use of public funds by Members. Dr LI further said that there should be a mechanism to monitor Members' use of the operating expenses reimbursements, and to review the relevant guidelines from time to time. Dr LI added that he supported the appointment of independent persons to conduct investigation into allegations of improper use of public funds by Members.

60. Mrs Selina CHOW said that in the previous studies undertaken by the Committee on Members' Interests on whether the committee should be empowered to investigate complaints against the conduct of individual Members, some Members had expressed concern about Members themselves inquiring into the conduct of fellow Members. Mrs CHOW said that Members should be mindful of such a concern in considering whether a monitoring mechanism should be established.

61. Members agreed that the LegCo Secretariat should prepare an information paper on the existing arrangements for Members to make claims for operating expenses reimbursements.

62. Ms Emily LAU requested that the paper should also provide statistics on past complaints from the public in this regard and information on how such complaints had been followed up. Mr Albert HO requested that the paper should include information on the practices in overseas countries. Mr Andrew WONG requested that the paper should cover the relevant studies, such as those conducted by the former LegCo Ad Hoc Group to Review the Allowance for Members and the Independent Commission on Remuneration for the Members of the Executive and the Legislature of the Hong Kong Special Administrative Region.

63. There being no other business, the meeting ended at 4:05 pm.

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Council Business Division 2
Legislative Council Secretariat
3 December 2003