

立法會
Legislative Council

LC Paper No. CB(2) 919/04-05

Ref : CB2/H/5/04

House Committee of the Legislative Council

**Minutes of the 16th meeting
held in the Legislative Council Chamber
at 4:05 pm on Friday, 18 February 2005**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
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, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LEE Wing-tat
Hon LI Kwok-ying, MH

Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mrs Vivian KAM	Principal Council Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Council Secretary (2)5
Miss Anita HO	Assistant Legal Adviser 2
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Lolita SHEK	Senior Council Secretary (2)7

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I. Confirmation of the minutes of the 15th meeting held on 4 February 2005
(*LC Paper No. CB(2)848/04-05*)

The minutes were confirmed.

II. Matters arising

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

Introduction of bills

2. The Chairman said that she had reminded CS, on behalf of Members, that the Administration should introduce the bills in the Legislative Programme as soon as possible and avoid “bunching” at the end of the session. CS had responded that the Administration had held an internal review in respect of the Legislative Programme on 3 February 2005, and the Legislative Council (LegCo) would be informed of the up-to-date position. CS had also undertaken to ensure that bills would be introduced into the Council as soon as possible.

3. Mr LEE Wing-tat said that the Administration should introduce the bills on the Legislative Programme into LegCo as early as possible.

III. Legal Service Division report on subsidiary legislation gazetted on 8 February 2005

(*LC Paper No. LS 35/04-05*)

4. The Acting Legal Adviser said that only one item of subsidiary legislation, i.e. the Air Transport (Licensing of Air Services) (Amendment) (No. 2) Regulation 2004 (Commencement) Notice 2005, was gazetted on 8 February 2005.

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5. The Acting Legal Adviser explained that by this Notice, the Secretary for Economic Development and Labour appointed 8 February 2005 as the day on which the Air Transport (Licensing of Air Services) (Amendment) (No. 2) Regulation 2004 came into operation.

6. Members did not raise any queries on this item of subsidiary legislation.

7. The Chairman reminded Members that the deadline for amending this item of subsidiary legislation was 16 March 2005, or 20 April 2005 if extended by resolution.

IV. Further report by the Legal Service Division on Merchant Shipping (Prevention of Pollution by Sewage) Regulation and Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation

(LC Paper No. LS 35/04-05)

[Previous papers:

LC Paper No. LS 30/04-05 issued vide LC Paper No. CB(2) 717/04-05 dated 20 January 2005; and

Paragraphs 30 to 34 of the minutes of the 14th House Committee meeting on 21 January 2005 (LC Paper No. CB(2) 764/04-05) issued vide LC Paper No. CB(2) 806/04-05 dated 2 February 2005]

8. The Chairman said that the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (the Sewage Regulation) and the Merchant Shipping (Prevention and Control of Pollution) (Fees) Regulation had been considered at the meeting on 21 January 2005. The Legal Service Division had raised some drafting queries on the Sewage Regulation with the Administration and provided a further report.

9. The Acting Legal Adviser said that the Administration had clarified most of the drafting queries raised by the Legal Service Division, and had agreed to make an amendment to section 28(2) of the Sewage Regulation. As the amendment did not affect the operation of the Regulation, the Administration had proposed to include the amendment in the next Statute Law (Miscellaneous Provisions) Bill.

10. Members did not raise any queries on these two Regulations.

11. The Chairman reminded Members that the deadline for giving notice of amendments to the two Regulations was 2 March 2005.

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V. Business for the Council meeting on 23 February 2005

(a) Questions

(LC Paper No. CB(3) 363/04-05)

12. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 23 February 2005.

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

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

(c) Government motion

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

(d) Members' motions

(i) Motion on "Taking forward the issues of concern to the elderly"

(Wording of the motion issued vide LC Paper No. CB(3) 356/04-05 dated 15 February 2005.)

(ii) Motion on "Policy on the recycling industry"

(Wording of the motion issued vide LC Paper No. CB(3) 357/04-05 dated 15 February 2005.)

15. The Chairman said that the above motions would be moved by Mr TAM Yiu-chung and Mr Andrew LEUNG respectively, and the wording of the motions had been issued to Members.

VI. Business for the Council meeting on 2 March 2005

(a) Questions

(LC Paper No. CB(3) 364/04-05)

16. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 2 March 2005.

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

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

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(c) **Government motion**

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

(d) **Members' motions**

(i) **Motion to be moved by Hon Frederick FUNG Kin-kee**

19. The Chairman said that the subject matter of Mr FUNG's motion was "Expectations for the Commission on Poverty". The wording of the motion had just been issued to Members vide LC Paper No. CB(3) 375/04-05, and also tabled at the meeting.

(ii) **Motion to be moved by Hon LEE Wing-tat**

20. The Chairman said that the subject matter of Mr LEE's motion was "Scheme of Control Agreements of the two power companies and the long-term energy policy". The wording of the motion had just been issued to Members vide LC Paper No. CB(3) 376/04-05, and also tabled at the meeting.

21. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 23 February 2005.

VII. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 874/04-05)

22. The Chairman said that there were seven Bills Committees and six subcommittees in action.

VIII. Report of the Subcommittee on West Kowloon Cultural District Development on its terms of reference

(LC Paper No. CB(1) 917/04-05)

23. Mr Alan LEONG, Chairman of the Subcommittee, invited Members to note the terms of reference of the Subcommittee as detailed in paragraph 4 of the paper. Members did not raise any queries on the terms of reference.

IX. Proposals to request the Administration to disclose further information relating to the Cyberport development, and to seek the Council's authorisation for the House Committee to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance to order the Administration to disclose such information

(Hon LEE Wing-tat's letter dated 15 February 2005 to the Chairman of the House Committee (LC Paper No. CB(2) 873/04-05(01))

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24. Mr LEE Wing-tat said that although the Secretary for Commerce, Industry and Technology had provided various documents relating to the Cyberport Project for the meeting of the Panel on Information Technology and Broadcasting on 2 February 2005, the information he requested in paragraph 6 of his letter dated 15 February 2005 to the Chairman of the House Committee was not included. Mr LEE considered that the information was essential to addressing the doubts and concerns of the public and the commercial sector about the non-standard arrangement adopted for the Cyberport Project. Mr LEE further said that he had written to CS to request for such information, but CS did not agree to provide the information. He hoped that the House Committee would agree to request the Administration to disclose the information, and to seek the Council's authorisation to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration to disclose such information.

25. Regarding the concerns raised by some Members about disclosure of commercial secrets and possible impairment of the candour of discussions, if records of internal meetings and deliberations of the Executive Council (ExCo) were made public, Mr LEE suggested that sensitive information could be deleted from the documents concerned before disclosure. Mr LEE added that he was willing not to request for the relevant ExCo papers and minutes, i.e. item 5 in paragraph 6 of his letter.

26. The Chairman sought Members' views on Mr LEE's proposals –

- (a) that the Administration should be requested to provide the information listed in paragraph 6 of his letter, with the exception of the relevant ExCo papers and minutes, i.e. item 5; and
- (b) that the House Committee should seek the Council's authorisation to exercise the powers conferred under Cap. 382 to order the Administration to disclose the information.

27. Mr Ronny TONG, Dr YEUNG Sum, Dr KWOK Ka-ki, Mr Martin LEE, Mr LEUNG Yiu-chung, Ms Audrey EU, Mr Albert CHENG, Ms Emily LAU and Mr LEE Cheuk-yan expressed support for Mr LEE Wing-tat's proposals.

28. Mr Ronny TONG said that CS's reply dated 7 February 2005 to Mr LEE Wing-tat's earlier letter had failed to clarify certain important points. For instance, CS said in his reply that "the decision to take forward PCG's [Pacific Century Group] proposal as a matter of priority is evident from the then Secretary for Information Technology and Broadcasting's (SITB) earlier letter dated 14 January 1999 to PCG". Mr TONG pointed out that SITB's letter merely stated that the Government had decided to take forward "consideration of the proposal" as a matter of priority. Moreover, CS did not explain why SITB still raised the "five fundamental issues" with PCG on 26 January 1999,

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if a decision had already been made on 14 January 1999 to take forward the project as a matter of priority. Mr TONG considered that the Administration should provide further information to clarify these points.

29. Dr YEUNG Sum said that the correspondence between the former SITB and PCG made people wonder whether something had happened between late January and mid February 1999 that led to a change in the Government's thinking about the Cyberport Project. Dr YEUNG further said that LegCo should seek further information to address concerns of the public about collusion between Government and business, in order to maintain investors' confidence in the governance and business environment in Hong Kong.

30. Mr LEUNG Yiu-chung agreed that obtaining more information from the Administration would help address the doubts and concerns of the public about collusion between Government and business.

31. Mr CHAN Kam-lam said that the Director of Audit had informed him at the lunch held before the meeting that the Audit Commission had opened a file on the Cyberport Project, and would possibly conduct a study on the Project. Mr CHAN further said that LegCo's investigation into the Project would politicise the matter. It would be more appropriate for the Audit Commission to conduct an independent and comprehensive value for money study on the Cyberport Project and present its report to the Public Accounts Committee (PAC) to consider.

32. Mr CHAN added that he could not support Mr LEE Wing-tat's proposals at the present stage, as there was no evidence of collusion between Government and business. LegCo should be careful in exercising its powers conferred under Cap 382, and should not order the Administration to provide information in a casual manner just because some Members had doubts about certain matters.

33. Referring to Mr CHAN's remarks that LegCo's investigation would politicise the matter, Dr KWOK Ka-ki said that should the Audit Commission conduct a study on the Cyberport Project, its report would have to be examined by PAC, which was also a LegCo committee. Dr KWOK did not agree that LegCo should not demand the Administration to provide further information unless there was evidence of collusion between Government and business. Dr KWOK considered that LegCo should obtain further information on the Cyberport Project to address the concerns and doubts of the public and the business sector about the Project. Dr KWOK further said that disclosure of further information would not only enable Members and the public to find out the truth about the Project, but would also do justice to Government, if there was no collusion between Government and business.

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34. Mr Martin LEE and Ms Audrey EU also disagreed that LegCo should not demand the Administration to provide further information unless there was evidence of collusion between Government and business. Ms EU added that Mr CHAN Kam-lam was adopting a double standard, as he supported the Audit Commission to conduct a study on the Cyberport Project, but objected to LegCo exercising its powers conferred under Cap. 382 to order the Administration to provide additional information on the Project.

35. Mr CHAN Kam-lam clarified that he did not object to Members seeking additional information from the Administration, if they had reasonable doubts about the Project. He only had reservations about Mr LEE's proposal to seek the Council's authorisation for the House Committee to exercise the powers conferred under Cap. 382 to order the Administration to disclose confidential and commercially sensitive information. He added that such a proposal had given rise to concern among the business sector.

36. Mr James TIEN said that Members belonging to the Liberal Party did not consider it appropriate to request the Administration to disclose commercial secrets and confidential information, such as minutes of internal meetings and ExCo meetings. However, they had no objection to requesting the Administration to provide the information referred to in items 1, 2 and 7 in paragraph 6 of Mr LEE Wing-tat's letter. Mr TIEN added that it was not necessary for LegCo to order the provision of such information by exercising the powers conferred under Cap. 382.

37. Mr Albert CHENG said that although the Administration had promised to provide additional information regarding the Hunghom Peninsula for Members' reference, it had not provided the information so far. Mr CHENG considered that LegCo should not waste time, and should exercise the powers conferred under Cap. 382 to order the Administration to disclose additional information on the Cyberport Project. Mr CHENG added that as there was suspicion about possible transfer of benefits or collusion between Government and business in the Cyberport Project, it would be a neglect of duty if Members did not pursue the matter.

38. Mr LEE Wing-tat informed Members that according to a survey conducted by the Democratic Party, about 60% of the respondents believed that there was collusion between Government and business. LegCo should obtain additional information to address the doubts of the public about the Cyberport Project.

39. Ms Emily LAU said that although LegCo had the right to order the Administration to disclose information, there would always be heated arguments whenever Members discussed whether to exercise the powers conferred under Cap. 382. Ms LAU considered it necessary for LegCo to obtain further information on the Cyberport Project, given the concerns and

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doubts of the public about the Project. Ms LAU further said that it was common in places, such as the United States, for separate investigations to be conducted in parallel by the Legislature and other bodies on the same matter. She saw no reason why LegCo could not obtain further information on the Cyberport Project, even though the Audit Commission might conduct a study on the Project.

40. Mrs Selina CHOW said that the business sector was concerned about disclosure of confidential information and commercial secrets. Mrs CHOW considered that safeguarding public interest did not necessarily mean that all information relating to the Cyberport Project should be disclosed. Mrs CHOW further said that it was necessary for the Government to ensure confidentiality of records of its internal meetings and deliberations, in order to encourage the candour of discussions; otherwise, it would adversely affect the operation of the Government and also the wider public interests. Mrs CHOW added that it was more important to make public the outcome or decision on a matter than to disclose details of the deliberations.

41. Mr LAU Kong-wah agreed that Members should follow up the concerns of the public about the Cyberport Project. The crux of the matter was how the concerns should be followed up in the most effective manner. In his view, it would be more effective for the Audit Commission to conduct a comprehensive study on the Cyberport Project and present its report to the PAC than for Members to request the Administration to provide information in a piecemeal manner. Mr LAU believed that the Audit report would cover all the relevant information, including those requested by Mr LEE Wing-tat. Mr LAU suggested Members to consider requesting the Audit Commission to conduct a study on the Cyberport Project.

42. Mr LEE Cheuk-yan said that Members would not have to seek information from the Administration in a piecemeal manner, if the Administration had agreed to disclose all relevant information relating to the Cyberport Project in the first place. Mr LEE further said that the Audit Commission was not empowered to investigate allegations of collusion between Government and business, as its duties were confined to conducting value for money studies. Referring to the concern expressed by Mrs Selina CHOW about disclosure of records of internal meetings of the Government, Mr LEE said that if this would deter transfer of benefits from Government to business, or collusion between Government and business, it would be a result welcomed by the public. Mr LEE added that the Government itself should provide proof to dispel any suspicion and concerns of the public that it had colluded with a certain business corporation in the matter.

43. Mr Fred LI said that the House Committee should seek clarification from the Audit Commission whether it would conduct a study on the Cyberport Project. He did not see why LegCo could not seek further information from

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the Administration, even though the Audit Commission might conduct a study on the same subject. Mr LEE added that the study by the Audit Commission could not substitute for the investigation by LegCo.

44. Ms Emily LAU said that she had absolutely no doubt that the Audit Commission would be able to conduct a study on the Cyberport Project in a very effective manner, given its recent report on the Discovery Bay development. However, she would like to remind Members of the importance of safeguarding the independence of the Commission, as provided for in Article 58 of the Basic Law. Ms LAU added that Members should not direct the Audit Commission to investigate the Project. Mr Martin LEE and Mr Albert CHENG shared Ms LAU's view that the independence of the Audit Commission should not be undermined.

45. Mr LAU Kong-wah said that conveying Members' concerns about the Cyberport Project to the Director of Audit would not undermine the independence of the Audit Commission, as it would be for the Commission to decide whether it would conduct a study on the Project. Mr LAU proposed that the House Committee should write to the Director of Audit requesting him to consider conducting a study on the Project.

46. Mr LEE Wing-tat asked whether Mr LAU Kong-wah's proposal was directly related to the agenda item under discussion.

47. The Chairman ruled that Mr LAU Kong-wah's proposal was not directed related to the agenda item, which was to request the Administration to provide further information on the Cyberport Project. The Chairman added that she would not deal with Mr LAU's proposal at the meeting.

48. Mr LEE Wing-tat clarified that his proposal was to seek the Council's authorisation for the House Committee to exercise the powers conferred under Cap. 382 to order the Administration to disclose the information referred to in items 1, 2, 3, 4, 6 and 7 in paragraph 6 of his letter.

49. The Chairman put Mr LEE Wing-tat's proposal to vote. The outcome of the vote was that 17 Members voted in favour of the proposal, and 22 Members voted against the proposal. The Chairman said that Mr LEE's proposal would not be pursued.

X. Any other business

50. There being no other business, the meeting ended at 4:58 pm.