

立法會  
*Legislative Council*

LC Paper No. CB(2) 1895/08-09

Ref : CB2/H/5/08

**House Committee of the Legislative Council**

**Minutes of the 27th meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 12 June 2009**

**Members present :**

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)  
Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Dr Hon David LI Kwok-po, GBM, GBS, JP  
Dr Hon Margaret NG  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon LEUNG Yiu-chung  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Andrew CHENG Kar-foo  
Hon TAM Yiu-chung, GBS, JP  
Hon LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Dr Hon Joseph LEE Kok-long, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon LEUNG Kwok-hung



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| Mrs Justina LAM   | Assistant Secretary General 3              |
| Mrs Percy MA      | Assistant Secretary General (Special Duty) |
| Mr Arthur CHEUNG  | Senior Assistant Legal Adviser 2           |
| Mrs Sharon TONG   | Principal Council Secretary (Complaints)   |
| Mr Simon WONG     | Chief Public Information Officer           |
| Miss Odelia LEUNG | Chief Council Secretary (2)6               |
| Mr Kelvin LEE     | Assistant Legal Adviser 1                  |
| Mr Timothy TSO    | Assistant Legal Adviser 2                  |
| Miss Kitty CHENG  | Assistant Legal Adviser 5                  |
| Mr KAU Kin-wah    | Assistant Legal Adviser 6                  |
| Ms Clara TAM      | Assistant Legal Adviser 9                  |
| Ms Amy YU         | Senior Council Secretary (2)3              |
| Mr Arthur KAN     | Legislative Assistant (2)8                 |

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Action

**I. Confirmation of verbatim transcript/minutes of meetings**

- (a) **Verbatim transcript of the special meeting held on 22 May 2009**  
(LC Paper No. CB(2) 1803/08-09)
- (b) **Minutes of the 26th meeting held on 5 June 2009**  
(LC Paper No. CB(2) 1813/08-09)

The two sets of verbatim transcript/minutes of meetings were confirmed.

**II. Matters arising**

**Report by the Chairman on her meeting with the Chief Secretary for Administration**

Visit by a Legislative Council (LegCo) delegation to Sichuan in connection with reconstruction support for the earthquake

2. Referring to CS's reply to the Chairman's letter concerning the proposal for a visit by LegCo Members to Sichuan in connection with reconstruction support for the earthquake, Ms Emily LAU enquired about the progress of the matter and whether and when the visit would be arranged. She pointed out that the Panel on Development would discuss the "Progress report on Hong Kong Special Administrative Region's work in support of reconstruction in the Sichuan earthquake stricken areas and third stage work proposal" at its meeting on 18 June 2009. In her view, it would not be acceptable for the Administration to seek further funding approval from the Finance Committee in connection with reconstruction support for Sichuan after simply briefing the Panel.

Action

3. The Chairman said that before the House Committee meeting, the LegCo Secretariat had enquired with the Administration about the progress of the matter, and the Administration had advised that a reply had yet to be received. She was given to understand that the matter was being actively pursued.

4. Ms Emily LAU said that she was concerned about the utilization of the fund approved by LegCo, and considered it necessary for the Administration to provide a report in this regard. She stressed that the order should be for the Administration to provide the report and for Members to conduct the visit before further funding approval was sought from the Finance Committee for the same purpose. She added that the last meeting of the Finance Committee for the current session was scheduled for 10 July 2009. She requested the Chairman to convey her views to CS.

5. Mr TAM Yiu-chung recalled that at an earlier House Committee meeting, he had agreed with the proposal for Members to visit Sichuan. He had also opined that it might not be feasible to arrange the visit in time before the end of the current session. Members took the view then that it was not necessary to bundle the visit and the scrutiny of further funding application for reconstruction support for the earthquake.

6. Mr Albert CHAN said that he had visited Sichuan the week before and noted the dire need of farmers in the mountains for support. He had written to the Administration requesting the allocation of funding to assist farmers of the ethnic minority. He stressed the importance of setting the appropriate priority for support and requested that the proposed visit should include a visit to these farmers. Mr CHAN added that as a matter of principle, there should be no discrimination against any Members when arrangements were made for the visit, and no LegCo Member should be refused entry to the Mainland. Should any LegCo Members be refused entry to the Mainland, all other LegCo Members should not join the visit in order to uphold the dignity of LegCo. He would not accept any kind of discrimination against any Members.

7. The Chairman said that Members should consider the related issues after the visit had been confirmed.

8. Mr Ronny TONG queried the urgency of seeking further funding for reconstruction support for Sichuan. He was given to understand from media reports that a large portion of the approved funding had yet to be used. Since there was no urgency, he shared the view that the visit should be conducted before the consideration of further funding application. He considered that Members should have the opportunity to see for themselves how much of the funding had been used and how it had been used.

Action

9. The Chairman said that as there was no consensus at the previous House Committee meeting for the visit to be conducted before the consideration of further funding approval, no request had been relayed to CS in this regard. Since some members had made such a request at the meeting, she would convey it to CS at their next meeting.

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

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

**Supplementary Appropriation (2008-2009) Bill**  
*(LC Paper No. LS 80/08-09)*

10. The Chairman said that the Bill provided for the appropriation of \$46,970,775,256.30 for the services of the Government in the financial year ending on 31 March 2009 in addition to the sum appropriated by the Appropriation Ordinance 2008.

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

**(b) Legal Service Division report on subsidiary legislation gazetted on 5 June 2009 and tabled in Council on 10 June 2009**  
*(LC Paper No. LS 83/08-09)*

12. The Chairman said that four items of subsidiary legislation were gazetted on 5 June 2009 and tabled in the Council on 10 June 2009.

13. Regarding the Airport Authority Ordinance (Map of Restricted Area) (Amendment) Order 2009, the Chairman said that it sought to specify the new boundaries of the Restricted Area. She added that it would come into operation on 15 October 2009.

14. In response to Mr James TO's enquiry as to whether the Restricted Area as specified by the Amendment Order concerned the regulation of parking spaces, Legal Adviser (LA) said that no such information was available.

15. Mr James TO suggested that further information on the Amendment Order be sought from the Administration and a decision on this item of subsidiary legislation be deferred to the next House Committee meeting after receipt of the information. Members agreed.

Action

16. Members did not raise any queries on the other three items of subsidiary legislation.

17. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 8 July 2009.

**IV. Further business for the Council meeting on 17 June 2009**

**(a) Questions**

*(LC Paper No. CB(3) 674/08-09)*

18. The Chairman said that Mr Jeffrey LAM Kin-fung had replaced his oral question.

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

**(i) Disciplined Services Legislation (Miscellaneous Amendments) Bill 2009**

19. The Chairman said that the relevant Bills Committee on the Bill had presented its report to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill. She added that Mr James TO would move Committee Stage amendments (CSAs) to the Bill.

**(ii) Dutiable Commodities (Amendment) Bill 2009**

20. The Chairman said that the Chairman of the relevant Bills Committee on the Bill had made a verbal report at the last House Committee meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill. The written report would be provided under agenda item VI(a) below.

**V. Business for the Council meeting on 24 June 2009**

**(a) Questions**

*(LC Paper No. CB(3) 673/08-09)*

21. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

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

Action

- (i) **Legal Practitioners (Amendment) Bill 2009**
- (ii) **Inland Revenue (Amendment) (No. 2) Bill 2009**
- (iii) **Bunker Oil Pollution (Liability and Compensation) Bill**

22. The Chairman said that the Administration had given notice to present the above three Bills to the Council on 24 June 2009. The House Committee would consider these Bills at its meeting on 26 June 2009.

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

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- (i) **Inland Revenue (Amendment) Bill 2009**

23. The Chairman said that at the House Committee meeting on 15 May 2009, Members did not raise objection to the resumption of the Second Reading debate on the Bill. At the last House Committee meeting, Members noted that the Administration intended to move CSAs to the Bill to reflect the additional tax reduction.

- (ii) **Merchant Shipping (Safety) (Amendment) Bill 2009**

24. The Chairman said that at the House Committee meeting on 29 May 2009, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) **Government motions**

- (i) **Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs under the Race Discrimination Ordinance and the Interpretation and General Clauses Ordinance relating to the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 681/08-09 dated 10 June 2009.)*

25. The Chairman said that the relevant Subcommittee had reported to the House Committee at the last meeting.

- (ii) **Proposed resolution to be moved by the Secretary for Food and Health under the Pharmacy and Poisons Ordinance relating to:**

Action

- **the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2009; and**
- **the Poisons List (Amendment) (No. 2) Regulation 2009**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 670/08-09 dated 8 June 2009.)  
(LC Paper No. LS 84/08-09)*

26. The Chairman said that the proposed resolution was for seeking LegCo's approval of the two Amendment Regulations to add nine substances to the First and Third Schedules to the Pharmacy and Poisons Regulations and Division A of Part I of the Poisons List Regulations, so that pharmaceutical products containing the substances must be sold only upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon.

27. Members did not raise objection to the Administration moving the proposed resolution at the Council meeting.

**(iii) Proposed resolution to be moved by the Secretary for Commerce and Economic Development under the Interpretation and General Clauses Ordinance**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 661/08-09 dated 5 June 2009.)  
(LC Paper No. LS 81/08-09)*

28. The Chairman said that the proposed resolution sought with effect from 26 June 2009 to transfer the statutory functions currently exercised by the Commissioner for Television and Entertainment Licensing (CTEL) by virtue of the Entertainment Special Effects Ordinance (Cap. 560) to the Head of Create Hong Kong (CreateHK). CreateHK was a dedicated office set up to drive the development of creative industries.

29. Dr Margaret NG sought clarification on whether the proposed transfer of statutory functions would affect public interest, as CTETL was the Entertainment Special Effects Licensing Authority under the current regulatory regime on the use of special effects materials.

30. At the invitation of the Chairman, LA said that as stated in paragraph 7 of the LSD Report, the relevant Panel had been briefed on the proposals for the establishment of CreateHK and the creation of a new Head of CreateHK, as well as the setting up of a \$300 million CreateSmart Initiative in relation to the development of creative industries. He believed that in considering the proposals, the Panel should have considered their social and economic



Action

implications. He added that LSD had focused on the legal aspects when scrutinizing the proposed resolution.

31. LA further said that the motion would be moved under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) which provided that LegCo might by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer. Past cases where transfer of statutory functions had been effected under Cap.1 included the implementation of the Political Appointment System and the reorganization of policy bureaux. Referring to paragraph 8 of the LSD Report, he pointed out that LSD noted that it did not appear that a statutory right of appeal or review to CTEL regarding the decision of CTEL had been provided under the Entertainment Special Effects Ordinance. LSD had written to seek clarification from the Administration on the legal basis for the relevant provisions in the proposed resolution and whether they would be outside the scope of section 54A of Cap. 1, and the Administration's reply had yet to be received.

32. Dr Margaret NG said that it was important to consider whether the proposed transfer of statutory functions was legally in order and whether the exercise of such statutory functions were subject to checks and balances. She was concerned whether these particular issues had been discussed by the relevant Panel, as it might have considered the proposals mainly from the economic perspective.

33. The Chairman said that the relevant Panel had discussed the proposals for the setting up of CreateHK at its meeting on 9 February 2009. It had not considered the detailed provisions in the proposed resolution.

34. The Chairman invited Members' views on the need to form a Subcommittee to study the proposed resolution.

35. At the invitation of the Chairman, LA said that Members could consider deferring a decision on the proposed resolution to the next House Committee meeting pending receipt of the Administration's reply to the legal issue raised by LSD. He also drew Members' attention that the Administration had given notice to move the proposed resolution at the Council meeting on 24 June 2009.

36. Dr Margaret NG said that she was aware of the impact of the formation of a subcommittee on the Administration's legislative timetable for the proposed resolution. She was therefore exploring the availability of other means to deal with the issue raised in the LSD Report without the formation of a subcommittee.

Action

37. The Chairman suggested deferring the decision on the proposed resolution to the next House Committee meeting pending a further report from LSD. She added that should Members decide then that a subcommittee should be formed, the Administration would be requested to withdraw its notice for moving the proposed resolution, in which case the proposed transfer of statutory functions would not be able to take effect as from 26 June 2009.

38. In response to Dr Margaret NG, the Chairman said that should Members consider it not necessary to form a subcommittee at the next House Committee meeting, the Administration could proceed to move the proposed resolution at the Council meeting on 24 June 2009 as scheduled.

39. Members agreed to defer the decision on the proposed resolution to the next House Committee meeting.

(e) **Members' motions**

(i) **Motion on "Seizing the chance to turn the risks from the 'Three Direct Links' across the Taiwan Strait into opportunities"**

*(Wording of the motion issued vide LC Paper No. CB(3) 683/08-09 dated 11 June 2009.)*

(ii) **Motion on "Strengthening human resources in the fields of finance and trade"**

*(Wording of the motion issued vide LC Paper No. CB(3) 682/08-09 dated 11 June 2009.)*

40. The Chairman said that the above motions would be moved by Mrs Sophie LEUNG and Dr Philip WONG respectively and the wording of the motions had been issued to Members.

41. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 17 June 2009.

**VI. Report of Bills Committees and subcommittees**

(a) **Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2009**

(LC Paper No. CB(1) 1876/08-09)

42. The Chairman said that Mr CHAN Kin-por, Chairman of the Bills Committee, had given a verbal report at the last House Committee meeting. A written report was provided for the House Committee meeting.

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43. Members did not raise any queries on the report.

(b) **Report of the Bills Committee on Voting by Imprisoned Persons Bill**

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44. Mr IP Kwok-him, Chairman of the Bills Committee, gave a verbal report, and said that the written report would be provided to Members the following week.

45. Mr IP reported that the Bills Committee was generally supportive of the proposals in the Bill to relax the existing restrictions on prisoners' voting right at elections of the Chief Executive, LegCo, District Councils, Election Committee and village representatives. The Bills Committee also supported the resumption of the Second Reading debate on the Bill at the Council meeting on 24 June 2009.

46. Mr IP further reported that the Administration would move CSAs to add a commencement clause to the Bill to the effect that the enacted Ordinance should come into effect on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette, in order that the Bill and the relevant electoral regulations would commence operation on the same date. Members did not raise any objection to the proposed CSAs.

47. Mr IP elaborated that the Bills Committee had held four meetings so far and its discussions had focused on the issue of whether prisoners serving life imprisonment (lifers) should be allowed to use a prison address as their registered address for the purpose of voter registration. It was the policy intention of the Administration to preclude a prisoner from using a prison address as his residential address for the purpose of voter registration. Such a policy was based on a recent High Court judgment which found that a place where a person was involuntarily kept did not qualify as one's residence under the Legislative Council Ordinance. The Administration was also concerned that allowing a prisoner to use a prison address as his registered address for the purpose of voter registration might lead to an unduly high proportion of prisoners in the registered electorate of certain constituencies. In this regard, members noted that most of the lifers (around 200) were currently detained in Stanley Prison and Shek Pik Prison.

48. Mr IP further said that some members shared the Administration's concern that if a prison address was accepted as a registered address for the purpose of voter registration, it would result in unfairness in an election and would possibly have an unbalanced impact on the community affairs in the constituencies concerned. On the other hand, some members were of the

Action

view that a lifer should be allowed to use a prison as the residential address for the purpose of voter registration, provided that the prison could meet the legal requirement of being his or her sole or principal residence. He added that Mr James TO and Dr Margaret NG had indicated that they would consider moving CSAs in this regard, and the Bills Committee would hold a further meeting on the following Monday to discuss the CSAs to be proposed by members.

49. Mr James TO said that he and Dr Margaret NG considered that as lifers would have a more meaningful connection with the prison address than their last registered dwelling place before imprisonment, they should not be precluded from using the prison as the residential address for the purpose of voter registration. He further pointed out that as there were around 6 000 registered voters in the Stanley Constituency, even if all the lifers in the Stanley Prison (around 100 to 200) used their prison address as the registered address for the purpose of voter registration, it would not have any significant impact on the fairness of an election in the Constituency. He would move CSAs in this regard, and the Bills Committee would meet on the following Monday to discuss his CSAs.

50. Dr Margaret NG said that her CSAs would also be provided for the Bills Committee's consideration at its next meeting.

51. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 15 June 2009.

**(c) Report of the Subcommittee on Subsidiary Legislation Relating to Consular Matters**

*(LC Paper No. CB(2) 1814/08-09)*

52. Mr James TO, Chairman of the Subcommittee, reported that the Subcommittee had held two meetings and had completed scrutiny of the nine items of subsidiary legislation, which sought to set out the relevant provisions of bilateral consular agreements signed between the People's Republic of China (PRC) and the nine foreign States which were applicable to Hong Kong.

53. Mr TO further reported that in response to the Subcommittee's request, the Administration had undertaken to remind the law enforcement agencies of the interpretation of Article 28(2) of the Consular Convention between PRC and India which provided that the means of transport of the consular post and of consular officers should be immune from search, arrest or execution. In addition, the Administration had provided a written confirmation on the circumstances under which the measures referred to in Article 33 of the

Action

Consular Convention between PRC and Russia would be taken to prevent any attack on the personal freedom and dignity of consular officers. In response to members' request, the Administration had also undertaken to amend the relevant Chinese text of section 3 of the Administration of Estates by Consular Officers Ordinance to achieve consistency with the English text.

54. Mr TO added that the Subcommittee supported the nine items of subsidiary legislation to take effect on 17 July 2009.

55. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 24 June 2009, the deadline for giving notice of amendments, if any, was Wednesday, 17 June 2009.

**VII. Position on Bills Committees and subcommittees**  
(*LC Paper No. CB(2) 1804/08-09*)

56. The Chairman said that there were six Bills Committees, seven subcommittees under the House Committee (i.e. four subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

**VIII. Any other business**

Additional House Committee meeting

57. The Chairman said that in anticipation of the presentation of bill(s) by the Administration at the last Council meeting in the current session on 8 July 2009, she had decided to convene an additional House Committee meeting on 10 July 2009 to consider those bills and subsidiary legislation tabled in the Council. Members noted.

58. There being no other business, the meeting ended at 3:03 pm.