

立法會
Legislative Council

LC Paper No. CB(2)245/09-10

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 3rd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 6 November 2009**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
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 Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
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, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, GBS, JP

Mr Andy LAU	Acting Principal Council Secretary (Administration)
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Arthur LEUNG	Chief Council Secretary (3)1
Mr Bonny LO	Assistant Legal Adviser 3
Miss Winnie LO	Assistant Legal Adviser 7
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of the minutes of the 2nd meeting held on 23 October 2009
(LC Paper No. CB(2) 186/09-10)

The minutes were confirmed.

II. Matters arising

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

Maintenance of the LegCo Building

2. The Chairman said that she had conveyed to CS Members' concern about the power failure at the Legislative Council (LegCo) Building which occurred on 22 October 2009 and their request for the Administration to follow up actively the maintenance works in the LegCo Building. CS had indicated that he would request the relevant Government departments to take follow-up action. He was given to understand that the Electrical and Mechanical Services Department (EMSD) was following up the matter actively.

3. Referring to the report on the power failure incident issued by the LegCo Secretariat to Members, Ms Emily LAU sought elaboration on the follow-up actions taken to avoid the recurrence of similar incidents.

4. At the invitation of the Chairman, Secretary General (SG) briefed Members on the remedial and preventive actions taken/to be taken to ensure reliable power supply to the LegCo Building in future. SG elaborated that EMSD had replaced all damaged devices including the flood lights in the Chamber, a flood light transformer and a circuit breaker. As a precautionary measure, all flood light transformers and circuit breakers that were similar to the faulty ones would be replaced as soon as possible. In the event that the

Action

relevant circuit breakers had become obsolete and replacement parts could not be found, the circuit breakers would be replaced by new ones. SG added that EMSD would also consider the viability of re-configuring the existing electrical circuit layout so as to reduce the risk of critical areas being affected at the same time.

5. The Chairman said that The Legislative Council Commission would follow up the matter.

Legislative Programme 2009-2010

6. The Chairman said that according to the Legislative Programme for the 2009-2010 session, the Administration intended to introduce 22 bills into LegCo, of which eight would be introduced in the first half of the session. She had requested CS to remind the bureaux concerned to introduce the bills as early as possible, and CS had undertaken to do so.

Special House Committee meeting

7. The Chairman said that she had reiterated to CS Members' request for him to attend a special House Committee meeting as early as possible. CS had indicated that he would propose a date for the meeting.

8. The Chairman said that she would continue to follow up the matter with CS.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on subsidiary legislation gazetted on 23 October 2009 and tabled in Council on 28 October 2009**
(*LC Paper No. LS 7/09-10*)

9. The Chairman said that a total of four items of subsidiary legislation, including two Commencement Notices were gazetted on 23 October 2009 and tabled in the Council on 28 October 2009.

10. Members did not raise any queries on these four items of subsidiary legislation.

11. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 25 November 2009.

Action

(b) Legal Service Division report on subsidiary legislation gazetted on 30 October 2009 and tabled in Council on 4 November 2009

(LC Paper No. LS 8/09-10)

12. The Chairman said that a total of 14 items of subsidiary legislation, including nine Commencement Notices were gazetted on 30 October 2009 and tabled in the Council on 4 November 2009.

13. Regarding the Dumping at Sea (Exemption) (Amendment) Order 2009, the Chairman said that it sought to specify the foreshore and sea-bed situated in an area to the east of Sha Chau as a reclamation area. A new sediment disposal facility was being constructed in the reclamation area. The Order would come into operation on 1 January 2010.

14. Mr LEE Wing-tat expressed concern about the operation of sediment disposal facilities, and considered it necessary to form a subcommittee to study the Order.

15. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Mr Albert HO and Mr WONG Yung-kan.

16. Regarding the Energy Efficiency (Labelling of Products) Ordinance (Amendment of Schedules) Order 2009, the Chairman said that a resolution was passed at the Council meeting on 21 October 2009 to introduce the second phase of the Mandatory Energy Efficiency Labelling Scheme (MEELS) by adding two products, namely, washing machines and dehumidifiers, as prescribed products. The Order was to add washing machines and dehumidifiers to Part 2 of Schedule 1, Schedules 2 and 3 to the Ordinance with the effect that the supply of a washing machine or dehumidifier required a reference number and an energy label.

17. The Chairman further said that the Panel on Environmental Affairs had been consulted on the legislative proposals at its meeting on 15 July 2009, and members expressed general support for the proposals.

18. Mr Vincent FANG considered it necessary to form a subcommittee to study the Order.

19. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Mr Vincent FANG, Mr WONG Ting-kwong, Mr KAM Nai-wai (as advised by Mr Fred LI) and Miss Tanya CHAN.

20. Members did not raise any queries on the other 12 items of subsidiary legislation.

21. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 2 December 2009.

IV. Business for the Council meeting on 11 November 2009

(a) Questions

(LC Paper No. CB(3) 118/09-10)

22. 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

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

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

(i) Immigration (Amendment) Bill 2009

(ii) Bunker Oil Pollution (Liability and Compensation) Bill

24. The Chairman said that the Bills Committees on the above two Bills had reported to the House Committee at the last meeting, and Members had not raised objection to the resumption of the Second Reading debates on the Bills.

(d) Government motion

Proposed resolution to be moved by the Secretary for Home Affairs under the Criminal Procedure Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 68/09-10 dated 21 October 2009.)

(LC Paper No. LS 5/09-10)

25. The Chairman said that the proposed resolution was for seeking LegCo's approval of the Legal Aid in Criminal Cases (Amendment) Rules 2009 to increase by 8.3% the fees payable to solicitors or counsel in private practice engaged to undertake litigation work in criminal cases on behalf of the Legal Aid Department. The fee increase would also be adopted by the Department of Justice in engaging lawyers in private practice to appear for the Government in criminal cases. Fees payable to duty lawyers for providing legal representation under the Duty Lawyer Scheme would follow suit.

26. The Chairman further said that the Administration had informed the Panel on Administration of Justice and Legal Services of the proposed fees adjustment at its meeting on 22 June 2009. While the Panel had not raised any query on the proposal, many members were of the view that the existing criminal legal aid fees system should be reviewed.

Action

27. Dr Margaret NG said that the proposed fees adjustment was to reflect the movement of the Consumer Price Index (C) during the relevant reference period, and was a separate matter from the review on the structure and fee rates of the criminal legal aid fees system.

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

(e) **Members' motions**

- (i) **Proposed resolution to be moved by Hon Miriam LAU Kin-yeek under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009**
(Wording of the proposed resolution issued vide LC Paper No. CB(3) 124/09-10 dated 5 November 2009.)

29. The Chairman said that in her capacity as the Chairman of the relevant Subcommittee, she would move a motion at the Council meeting to extend the scrutiny period of the Regulation to 2 December 2009.

- (ii) **Motion on "Re-formulating the special education policy"**
(Wording of the motion issued vide LC Paper No. CB(3) 105/09-10 dated 30 October 2009.)

- (iii) **Motion on "Requesting the Government to provide support services for men in Hong Kong"**
(Wording of the motion issued vide LC Paper No. CB(3) 104/09-10 dated 30 October 2009.)

30. The Chairman said that the above motions would be moved by Ms Cyd HO and Mr WONG Kwok-hing respectively and the wording of the motions had been issued to Members.

31. The Chairman further said that the deadline for giving notice of amendments to the motions had expired.

V. Business for the Council meeting on 18 November 2009

- (a) **Questions**
(LC Paper No. CB(3) 119/09-10)

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

Action

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

Import and Export (Amendment) Bill 2009

33. The Chairman said that the Administration had given notice to present the above Bill to the Council on 18 November 2009. The House Committee would consider the Bill at its meeting on 20 November 2009.

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

Copyright (Amendment) Bill 2009

34. The Chairman said that the Bills Committee on the above Bill had reported to the House Committee at the last meeting, and Members had not raised objection to the resumption of the Second Reading debate on the Bill.

(d) **Government motion**

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

(e) **Members' motions**

(ii) **Motion to be moved by Hon WONG Sing-chi**

36. The Chairman said that the subject of the motion to be moved by Mr WONG Sing-chi was "Providing support for family carers".

(iii) **Motion on "Strengthening and continuously supporting the teaching and learning of Chinese for non-Chinese speaking students"**

(Wording of the motion issued vide LC Paper No. CB(3) 125/09-10 dated 5 November 2009.)

37. The Chairman said that the above motion would be moved by Dr Margaret NG and the wording of the motion had been issued to Members.

38. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 11 November 2009.

VI. Report of Bills Committees and subcommittees

Report of the Subcommittee on Preparatory Work in relation to the Establishment of an Investigation Committee under Rule 49B(2A) (Disqualification of Member from Office) of the Rules of Procedure

(LC Paper No. CB(3) 122/09-10)

39. Before inviting the Chairman of the Subcommittee to report on its deliberation, the Chairman informed Members of the latest position regarding her drafting of the motion to censure Mr KAM Nai-wai concerning the dismissal of an assistant under Rule 49B(1A) of the Rules of Procedure (RoP). The Chairman said that she and the three Members who would jointly sign the motion had held several meetings to discuss the wording of the motion. The Member's assistant concerned had earlier on conveyed a verbal message to Members through her lawyer that she was willing to assist in the wording of the schedule to the censure motion, but she had not made any contact with them ever since. The Chairman said that the draft wording of the censure motion was sent to the assistant's lawyer on 3 November 2009. She and the three Members would welcome any assistance in any form to be provided by the assistant, and the assistant was requested to respond before the close of play on 10 November 2009. The Chairman said that she and the three Members would consider any response from the assistant, and they would then give notice for the censure motion.

40. Mr Ronny TONG enquired whether she and the three Members had ascertained any facts in the course of drafting the censure motion or whether they had simply made reference to media reports. He also enquired if they had discussion on whether they would proceed with the motion should the assistant not come forth to assist and whether they would still leave it to the Subcommittee or the Council to decide if the allegations turned out to be not as serious as originally appeared.

41. The Chairman pointed out that at the present stage when the wording of the censure motion was being drafted, it was inappropriate to discuss further details or to disclose the draft wording of the motion in order not to prejudice the possibility of the assistant coming forth to assist. She said that she and the three Members had drafted the wording prudently on the basis of facts and not media reports. It would be for the Council to consider the adequacy of the censure motion as drafted and the relevant facts mentioned in determining the further action to be taken.

42. Ms Cyd HO considered that there had been oversight in deciding on the invocation of the mechanism under RoP 49B(1A) to follow up the matter. She pointed out that any Members who considered it necessary to invoke RoP 49B(1A) should shoulder political responsibility for their action. However, Members decided that the censure motion should be moved by the Chairman of the House Committee. Such a decision went against the spirit of political responsibility enshrined in the rule as the Member moving the motion was only

Action

acting on behalf of Members, and Members who wanted to invoke the mechanism could hide behind the decision of the House Committee. She sought clarification on whether the censure motion would be moved by the Chairman in her individual capacity or on behalf of Members. Should the latter be the case, she was concerned whether Members would have the opportunity to have sight of the wording of the motion.

43. The Chairman clarified that the House Committee initially decided that the censure motion should be moved by the Chairman of the House Committee on behalf of Members. Subsequently, it transpired that she could not move the motion on behalf of Members and the Member moving the motion had the responsibility for drafting the motion. She had therefore taken on the task in drafting the motion on the basis of facts together with the three Members who would sign the notice for the motion. Proper notice would be given for the moving of the motion at a Council meeting, and an investigation committee would investigate the matter stated in the motion. After the investigation committee had completed its investigation and submitted its report to the Council, Members would then decide whether the allegations were substantiated. The Chairman added that the motion would be moved by her in her individual capacity.

44. In response to Ms Cyd HO, the Chairman said that as she and the three Members would proceed with the moving of the motion in their individual capacity, the wording of the motion would not be submitted to the House Committee for endorsement. Proper notice would be given for the moving of the censure motion, and Members would be notified of such and the wording of the motion.

45. Ms Cyd HO sought further clarification on whether the mover of the motion and the three Members signing the notice for the motion would shoulder responsibility for their action.

46. The Chairman stressed that it was a decision made by Members to invoke the mechanism under RoP 49B(1A) to follow up the matter. Members should be well aware of the background leading to such a decision. She could not move the motion on behalf of Members under RoP as she had to draft the motion and provide the details of the allegations. The motion therefore would be moved by her in her individual capacity. The Chairman added that there should not be any misunderstanding that the moving of the censure motion was initiated by her, and Members should not perceive the matter as such.

47. Mr Paul TSE considered that the Chairman had not clarified Ms Cyd HO's query. In his view, if the censure motion was to be moved by the Chairman in her individual capacity, she had to take responsibility for the action. She could not shirk her responsibility on the excuse that she only acted on the decision of Members. Mr TSE also sought clarification on the facts based on which the Chairman had drafted the motion and whether these included the declarations made by the assistant to the media.

Action

48. The Chairman said that Members would have the opportunity to debate on the censure motion. She did not consider it appropriate to go into the details of the wording of the motion.

49. Mr Paul TSE considered that due process must be observed in proceeding with the motion. He reiterated that the mover of the motion could not shirk her responsibility on the excuse that she only acted on the decision of Members.

50. The Chairman stressed that she had not attempted to and would not shirk her responsibility for the moving of the motion.

51. Ms Emily LAU said that the process for the moving of a censure motion should be fair and impartial as any Member could be the subject of such a motion. In her view, there had been an oversight in the discussion on the invocation of the mechanism under RoP 49B(1A) to follow up the matter, and Members should learn from experience to make improvement. She considered it necessary to make clear the criteria for invoking the mechanism and to enhance the transparency in the process of drafting a censure motion. Instead of leaving the censure motion under discussion to be decided by the Council, she enquired whether the Chairman and the three Members had considered the option of not proceeding with the motion after taking into account the available information.

52. Dr Margaret NG agreed entirely with the Chairman's stance and her explanation. She said that the issue at stake related to the provisions of RoP; how Members had come to the decision to invoke the mechanism under RoP was another issue. She pointed out that it was the right of any Member to move a censure motion under RoP 49B(1A) provided that three other Members would jointly sign the notice for the motion. Like all other Members' motions, the responsibility rested with the mover to draft the wording of the motion, and there was no need for the mover to explain to or discuss with other Members how he or she had drafted the motion. She highlighted the discussion at the House Committee meeting at which the decision to invoke the mechanism under RoP 49B(1A) to follow up the matter was made. She pointed out that there was a proposal of changing the terms of reference of the Committee on Members' Interest (CMI) on a one-off basis to empower it to investigate the matter. Members considered the proposal inappropriate, and that due process must be adhered to in following up any allegations about Members' misbehaviour. As RoP 49B(1A) was the only way provided in RoP for LegCo to investigate such matters, Members made a decision to invoke the mechanism and agreed that the House Committee Chairman should be the mover of the motion. That being the case, it was for the mover of the motion to decide whether or not to proceed with the motion. The mover could decide not to proceed with the motion should he or she consider the relevant information inadequate. Dr NG stressed that the exercise of a Member's right to move a censure motion should not be inhibited by other Members. Once such a

Action

motion was moved, the matter stated in the motion would be referred to an investigation committee unless a motion for the Council to order otherwise was passed. She added that unlike the moving of a motion for the appointment of a select committee to which the House Committee's agreement would be sought, there was no need for the mover of a censure motion to explain to the House Committee why he or she would move such a motion. The responsibility for the moving of the motion rested with the mover.

53. Mr LAU Kong-wah considered it unfair for Ms Cyd HO and Mr Paul TSE to challenge the moving of the motion by the Chairman. He pointed out that the decision to invoke the mechanism under RoP 49B(1A) to follow up the matter was made unanimously by Members after lengthy discussions and consideration of various options at the House Committee meeting. The important point was that the mover of the censure motion and the three Members who would sign the notice for the motion would proceed in a fair and impartial manner. A Subcommittee had been appointed to undertake preparatory work, and an investigation committee would be set up later to investigate the matter after the censure motion was moved and adjourned. As due process had been and would be followed, he considered it inappropriate to re-open discussion on the matter.

54. Dr Joseph LEE thanked Dr Margaret NG for explaining the background leading to the moving of the censure motion. He considered the background information very important. He stressed that it was the decision of Members to investigate the matter by the moving of the censure motion, and it was not the individual decision of the Chairman and the three Members who would sign the notice for the motion to investigate the matter. Members had not decided that the approval of the House Committee ought to be sought on the wording of the censure motion before notice for the motion was given. Dr LEE added that Members should be fair to the mover and the three Members signing the notice for the motion.

55. Mr IP Kwok-him said that he agreed with the Chairman's explanation. He said that there was a timeframe for the moving of the censure motion. Members would be notified shortly of the moving of the motion and the wording of the motion. He added that the various steps were being taken in accordance with rules, and the process was transparent.

56. Mr Paul TSE clarified that he had no intention of challenging the Chairman or being unfair to the three Members who would sign the notice for the motion. His point was that should these Members consider that there was no case to proceed with the motion, they should make such a decision. They should not shirk their responsibility for going ahead with the moving of the motion even if there was no case on the ground that they only acted on the decision of Members and that Members should bear collective responsibility.

Action

57. The Chairman said that Mr TSE should not put words into Members' mouth. She clarified that she had never said that she should not be held responsible for the moving of the motion because she only acted on the decision of Members. She said that she had informed Members of the position concerning the moving of the censure motion because she was given to understand by the Clerk that some members would wish to know about it.

58. Mr LEUNG Kwok-hung sought clarification on whether the Chairman could choose not to proceed with the moving of the censure motion.

59. The Chairman said that she and the three Members had drafted the wording of the motion on the basis of available information. They might get more information and would proceed with the moving of the censure motion. She added that they would be conscientious in their work. Like other Members' motions, there was no need for her to seek the approval of the House Committee for the moving of the censure motion or the wording of the motion.

60. Ms Cyd HO said that she had only sought clarification on the capacity of the mover in moving the censure motion.

61. The Chairman said that it was clear from the relevant provision in the RoP that the mover of a censure motion should do so in his or her individual capacity.

62. At the invitation of the Chairman, Mrs Sophie LEUNG, Chairman of the Subcommittee, made a report on the procedure proposed by the Subcommittee for the election of Members for appointment to an investigation committee as detailed in its report.

63. Mrs LEUNG reported that the Subcommittee was of the view that the proposed election procedure, once determined by the House Committee, should apply to any investigation committee established in future. She further said that other than the proposed election procedure, the Subcommittee did not consider that there was any other preparatory work it should undertake in relation to the establishment of an investigation committee.

64. Mrs LEUNG then highlighted the proposed election procedure as set out in Appendix II to the report -

- (a) The election should be held at a meeting of the House Committee, the date of which should be appointed by the House Committee.
- (b) Nominations should be made in writing and delivered to the LegCo Secretariat by the deadline for nomination before the election date. Where the number of nominations made in writing was less than seven, further nominations might be made orally at the House Committee meeting at which the election was conducted.

Action

- (c) Where the total number of valid nominations made in writing or orally was more than seven, a poll should be taken at the House Committee meeting by a show of hands to determine which of the Members should be nominated.
- (d) In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes (i.e. "tied votes"), a further round poll should be taken to resolve the tied votes; and if there were still tied votes after that further round, lots would be drawn by the Chairman of the House Committee to determine which of the Members should be nominated.
- (e) After the election of Members for appointment to the investigation committee, the meeting of the House Committee should be suspended for 10 minutes to enable the elected Members to elect amongst themselves the Chairman and Deputy Chairman of the investigation committee.
- (f) The President would appoint the Chairman, Deputy Chairman and five members of the investigation committee in accordance with the election results.

65. Dr Priscilla LEUNG said that during the deliberation of the Subcommittee, she and Dr Margaret NG had expressed different views on the issue of representation of Members from different political parties or groupings on an investigation committee, the details of which were set out in paragraphs 21 to 24 of the Subcommittee's report. Referring to the paper on the procedure for the election of Members for appointment to the Public Accounts Committee (PAC), CMI and Committee on Rules of Procedure (CRoP) (LC Paper No. CB(3) 17/08-09) for the House Committee meeting on 10 October 2008, she pointed out that Members were then advised that in making nominations for appointment to the committees, they should have regard to the need to ensure that the committees' membership was balanced and broadly representative of the membership of the Council. In view of the serious nature of the work of an investigation committee which could lead to the disqualification of the Member concerned from office, she maintained her view that the principle of balanced representation should apply equally to an investigation committee, same as the arrangement for select committees, standing committees and The Legislative Council Commission.

66. Dr Priscilla LEUNG stressed the importance to state explicitly as a principle for the election procedure that an investigation committee should have balanced representation. She did not subscribe to the view that the principle should not apply to an investigation committee on the ground that Members belonging to the same political party or grouping as the Member alleged of misbehaviour might decide not to take part in the work of the investigation committee concerned. She elaborated by way of illustration that

Action

Mr Albert HO had declared an interest that he was hired by some victims of Lehman Brothers products to represent them in legal proceedings and had decided to withdraw from the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products. However, other Members belonging to the same political party had continued to take part in the work of the Subcommittee. In her view, a conflict of interest might involve only one or certain Members belonging to a political party or grouping, and it was not necessary for all Members belonging to that political party or grouping to refrain from taking part in the investigation. She reiterated that she failed to see why the principle of balanced representation should not apply to the election procedure of an investigation committee the work of which might result in the disqualification of a Member from office.

67. Dr Margaret NG explained the two main reasons why she did not consider it appropriate to include the principle of balanced representation in the election procedure of an investigation committee. She elaborated that according to its terms of reference, the Subcommittee was tasked to consider and propose the procedure and not the principles for the election of Members for appointment to an investigation committee. Moreover, as the nature of work of an investigation committee was different from that of select committees or standing committees like PAC, the principles applicable to these committees did not apply automatically to an investigation committee. She was not saying that the principle of balanced representation should not apply to an investigation committee. She stressed that each case involving allegations of a Member's misconduct should be considered on its unique circumstances, and it was important to retain the maximum flexibility for Members in dealing with such cases. Such flexibility would be removed if this principle was stipulated in the election procedure and endorsed by the House Committee. She highlighted the possibility of the mechanism under RoP 49B(1A) being used as a tool for political suppression. She opined that Members belonging to the same political party as the Member alleged of misbehaviour might not wish to take part in the work of the investigation committee concerned. Should the principle of balanced representation be stipulated in the election procedure, these Members would be forced to take part in the investigation against their will and to accept the conclusions of the investigation committee, should they be in the minority in the Council. She reiterated the need for retaining the maximum flexibility for Members to deal with each case having regard to its peculiar circumstances. Rather, the most important concern in her view was to ensure as much transparency as possible in the election process and public scrutiny of the process. As such, voting on the nominations should be by a show of hands at an open meeting, rather than by secret ballot, and Members could claim division and have their votes recorded. Such a transparent and open election process could help prevent the mechanism from being abused for political suppression purposes.

68. Ms Cyd HO considered that the reference to "the Chairman of the House Committee" in paragraph 3 of the Subcommittee's report should be amended to "Hon Miriam LAU", in view of the Chairman's clarification that she would

Action

move the censure motion in her individual capacity, and not in her capacity as the Chairman of the House Committee. As there had been oversight in deciding on the invocation of the mechanism under RoP 49B(1A) to follow up the matter, she expressed reservation about the recommendation in paragraph 20 of the report that the proposed election procedure, once determined by the House Committee, should apply to any investigation committee established in future. In her view, while reference could be made to the proposed election procedure, the procedure should not apply as a rule to future cases.

69. Mr Ronny TONG said that the requirement in the Basic Law and RoP for the passage of a censure motion by a two-thirds majority vote of the Members present reflected the need to handle such matters prudently. He said that the case involving Mr KAM Nai-wai was special and the issue of political suppression was not in question. In his view, it was not intended under the Basic Law that there should be prior discussions in the House Committee on the moving of a censure motion or that the House Committee should agree on a censure motion to be moved by a certain Member. In the light of the special circumstances of the case, he did not consider it appropriate to apply the proposed election procedure for the investigation committee dealing with that case to future investigation committees.

70. Mr IP Kwok-him did not agree with Ms Cyd HO's view for amending paragraph 3 of the report. He said that the paragraph recorded the decision of the House Committee on 9 October 2009 that the censure motion would be moved by the Chairman of the House Committee.

71. Dr Priscilla LEUNG said that the proposed election procedure was not applicable to Mr KAM Nai-wai's case only. According to her understanding, it was the Subcommittee's recommendation that the procedure, once endorsed by the House Committee, should apply to any investigation committee established in future. This was the reason why she considered it important to stipulate the principle of balanced representation in the election procedure. She stressed that Members were not dealing with an individual case but the procedure for handling future cases. She reiterated that she failed to see the logic in not stating such a principle explicitly in the election procedure. She added that Members should not make a decision in haste, and the decision on the proposed election procedure could be deferred should Members need more time to consider the proposal.

72. At the invitation of the Chairman, SG said that it was indeed the Subcommittee's recommendation that the proposed election procedure, once determined by the House Committee, should apply to any investigation committee established in future. Nonetheless, as it was stipulated in the proposed procedure that the date for the election of members of an investigation committee should be appointed by the House Committee, the House Committee would have the opportunity to discuss and, if considered necessary, amend the election procedure when it decided on the election date.

Action

73. Dr Priscilla LEUNG suggested deferring a decision on the proposed election procedure to allow more time for Members to consider the matter thoroughly, in order to avoid a repetition of the hastiness in which the decision on the invocation of the mechanism under RoP 49B(1A) to follow up the matter had been made. She said that there was no urgency in deciding on the election procedure at the House Committee meeting. In her view, an investigation committee might be used for political suppression if the principle of balanced representation was not stipulated in the election procedure.

74. Mr LAU Kong-wah did not agree with the view that the decision to invoke the mechanism under RoP 49B(1A) to follow up the matter had been made in haste. On the contrary, it was made after lengthy discussions and thorough consideration. He said that during the deliberation of the Subcommittee, of which he was a member, he had considered the views of Dr Priscilla LEUNG and Dr Margaret NG on the issue of representation of Members from different political parties or groupings on an investigation committee. He agreed that it was desirable for an investigation committee's membership to be broadly representative of the membership of the Council to avoid the mechanism being abused for political suppression. The point of contention during the Subcommittee's deliberation was whether the principle should be stipulated in the election procedure for an investigation committee. Dr Margaret NG considered it inappropriate to do so as the principle might not apply to each and every investigation committee. He agreed with SG that Members could revisit the election procedure should an investigation committee be established in future. He pointed out that the views expressed by Members on the importance of the principle of balanced representation for an investigation committee would also be recorded in the minutes of the House Committee meeting. In the light of the above considerations, he did not consider it necessary to defer the decision on the proposed election procedure solely on account of the issue of representation of Members from different political parties on an investigation committee.

75. Dr Priscilla LEUNG reiterated the point that in the paper on the procedure for the election of Members for appointment to PAC, CMI and CRoP for the House Committee meeting on 10 October 2008, Members were advised that in making nominations, they should have regard to the need to ensure that the committee's membership was balanced and broadly representative of the membership of the Council. She pointed out that the work of other committees could also have potentially serious consequences, for instance, the inquiry by a select committee could lead to the stepping down of a Government official. Hence, she failed to see why the principle of balanced representation should not be stipulated in the election procedure of an investigation committee as in the case of other committees. She indicated that she would vote against the proposed election procedure if it was put to vote at the House Committee meeting.

Action

76. Ms Cyd HO said that she accepted the view that no amendment should be made to paragraph 3 of the report which reflected the decision of the House Committee meeting on 9 October 2009. However, she considered that amendments should be made to paragraph 4 of the report relating to the House Committee meeting on 16 October 2009. As there had been oversight in deciding on the invocation of the mechanism under RoP 49B(1A) on 9 October 2009, it was subsequently decided at the meeting on 16 October 2009 that the censure motion would be moved by Ms Miriam LAU in her individual capacity, and not in her capacity as the Chairman of the House Committee. In her view, such facts should be made clear in paragraph 4 to avoid any possible confusion in future.

77. The Chairman explained that the oversight related only to a procedural issue only. As it subsequently transpired that she could not move the motion on behalf of Members because she had to draft the motion, she had to move the motion in her individual capacity. She stressed that the background leading to the decision to invoke the mechanism under RoP 49B(1A) to follow up the matter was indisputable and had been duly recorded in the minutes of the relevant House Committee meetings.

78. At the invitation of the Chairman, SG said that the report under discussion was made by the Subcommittee. It was for the Subcommittee to decide the relevant background information to be incorporated into the report, and it would not be appropriate for Members to amend it. That said, she assured Members that the discussions made at the House Committee meeting would be recorded in the minutes of the meeting.

79. The Chairman said that it would be recorded clearly in the minutes of the House Committee meeting that the House Committee had initially decided that the censure motion should be moved by the Chairman of the House Committee meeting. Subsequently, after checking the relevant rules for invoking the censure motion, she had made known to Members that she could not move the motion on behalf of Members in her capacity as the Chairman of the House Committee, but she would do so in her own capacity as a Member. She considered it important to record clearly in the minutes of the House Committee meeting the background leading to the decision to invoke the mechanism under RoP 49B(1A) and for her to move the censure motion.

80. Dr Margaret NG said that she would not object to the proposal of deferring the decision on the election procedure should Members need more time for consideration. As she had taken part in lengthy discussions in the making of RoP 49B, she was well aware of the background to the Rule. She had come to her view on the issue of balanced representation after thorough consideration. She reiterated that it was inappropriate to stipulate the principle of balanced representation in the election procedure as it might not apply to an investigation committee the nature of which was different from that of other committees such as select committees.

Action

81. Mr LAU Kong-wah said that Dr Margaret NG and Dr Priscilla LEUNG had already made clear their views on the issue, which was not complex. As the Subcommittee had already made its report, Dr LEUNG could, if she so wished, make a formal proposal to the House Committee for incorporating the principle of balanced representation into the election procedure for an investigation committee, and the House Committee would then decide on the proposal.

82. Mr LEUNG Kwok-hung said that Members belonging to the League of Social Democrats had objected to investigating the allegations concerning Mr KAM Nai-wai. He was concerned that should the principle of balanced representation be stipulated in the election procedure, it could be used as a ground for challenging the validity of an investigation committee which did not comprise representatives from different political parties or groupings in the Council. He opined that the proposal would have serious consequences as an investigation committee could not be appointed should a major political party in the Council refuse to participate in it.

83. At the invitation of the Chairman, Acting Legal Adviser said that while the principle of balanced representation was stipulated in the election procedure of certain committees, strictly speaking it was not a procedure per se. After all, Members could decide for themselves the factors to be taken into account in making nominations for membership of a committee. Even if the principle was stated explicitly in the procedure, it would be difficult to enforce and could at best be advisory in nature. The Legal Adviser had explained to the Subcommittee the possibility that the stipulation of the principle in the election procedure might give rise to legal challenges to the validity of an investigation committee on the ground that its composition did not accord with the requirement of balanced representation. He stressed the need to consider the issue prudently.

84. Mr Ronny TONG said that he would not object to deferring the decision on the proposed election procedure. He reiterated his reservation about the recommendation that the proposed election procedure, once determined at the House Committee meeting, should apply to any investigation committee established in future, as the case in question was specific. In his view, should there be any doubt on the legal effect of the proposed election procedure, the issue should be referred to CRoP for consideration. He considered it inappropriate to make a decision at the meeting that the election procedure should apply to any future investigation committee.

85. Dr Priscilla LEUNG said that she had discussed with the Legal Adviser concerning the legal effect of the proposed election procedure. In her view, the same concern about judicial review should apply to other committees of an investigatory nature such as select committees and PAC. Any Member with or without political affiliation might not wish to participate in an investigation in certain issues because of a conflict of interest. She could not see the logic why the principle of balanced representation could be stated explicitly in the

Action

election procedure for other committees but not an investigation committee. She considered that if such a principle was not stipulated in the election procedure, it should at least be set out as a general advice to Members. She reiterated that Members should defer the decision on the proposed election procedure.

86. The Chairman invited Members' view on the need to defer the decision on the proposed election procedure.

87. Mr Ronny TONG reiterated his view that the issue concerning the application of the proposed election procedure to future investigation committees should be referred to CRoP for consideration.

88. Ms Emily LAU did not agree to the recommendation that the proposed election procedure, once determined by the House Committee, should apply to any investigation committee established in future. She opined that there had been oversight in making the decision on the way in following up the matter. She would not accept the making of another important decision in haste at the House Committee meeting.

89. Mr LEE Wing-tat said that as divergent views had been expressed, he considered it appropriate to defer the decision on the proposed election procedure.

90. Mrs Sophie LEUNG said that she noted Members' concern on the recommendation for applying the proposed election procedure for future investigation committees and would respect Members' views regarding deferral of the decision on the proposed election procedure. She added that the procedure could be for reference purpose. She also drew Members' attention to the fact that the Subcommittee would be dissolved after it had provided its report to the House Committee.

91. Mr IP Kwok-him shared the view that Members should defer the decision on the proposed election procedure to the next House Committee meeting.

92. In concluding the discussions, the Chairman said that as the House Committee would take note of the censure motion at a meeting after she had given notice, that should be the suitable opportunity for Members to consider the election procedure. As regards Mr Ronny TONG's suggestion for referring to CRoP the proposal for applying the proposed election procedure to investigation committees established in future, the Chairman requested the Secretariat to follow up. Members agreed.

Action

VII. Position on Bills Committees and subcommittees
(*LC Paper No. CB(2) 187/09-10*)

93. The Chairman said that there were 11 Bills Committees, nine subcommittees under the House Committee (i.e. six subcommittees on subsidiary legislation and three subcommittees on policy issues) and seven subcommittees under Panels in action.

VIII. Any other business

94. There being no other business, the meeting ended at 3:36 pm.

Council Business Division 2
Legislative Council Secretariat
12 November 2009