

立法會
Legislative Council

LC Paper No. CB(2) 820/09-10

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House Committee of the Legislative Council

**Minutes of the 12th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 22 January 2010**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Albert HO Chun-yan
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
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 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 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, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung

Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members absent :

Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, BBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

Ms Pauline NG	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General (Special Duty)
Ms Connie FUNG	Senior Assistant Legal Adviser 1
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 Timothy TSO	Assistant Legal Adviser 2
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 11th meeting held on 15 January 2010
(LC Paper No. CB(2) 783/09-10)

The minutes were confirmed.

II. Matters arising

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

Attendance of Government officials at debates on Members' motions without legislative effect

2. The Chairman said that she had requested CS to explain the reasons for not fielding any Government officials to attend the debate on the motion on "Releasing LIU Xiaobo" moved by Mr Fred LI at the Council meeting on 13 January 2010. CS had indicated that the Administration had all along not fielded any Government officials to attend such type of motion debates. As for the query raised by the Deputy Chairman about the Administration's unusual move of issuance of a press release on the motion, CS had explained that the press release was to clarify the Administration's stance on the matter, in response to anticipated requests from certain quarters of the community. CS had stressed that under the principle of "One Country, Two Systems", the Hong Kong Special Administrative Region (HKSAR) enjoyed a high degree of autonomy. The HKSAR and the Central Authorities each had their own judicial systems. Based on the principle of mutual respect, it would not be appropriate for the HKSAR Government to field any Government officials to attend the motion debate.

3. The Chairman proposed that as Mr Albert HO had written to the House Committee on the matter, discussions on the subject would be held under agenda item VIII. Members agreed to the proposed arrangement.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 15 January 2010
(LC Paper No. LS 36/09-10)

Action

4. The Chairman said that a total of four items of subsidiary legislation, including three Commencement Notices and one regulation made under the United Nations Sanctions Ordinance which was not required to be tabled in the Council, were gazetted on 15 January 2010.

5. Regarding the United Nations Sanctions (Democratic People's Republic of Korea) (Amendment) Regulation which was not required to be tabled in the Council, the Chairman suggested that it be referred to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions. Members agreed.

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

7. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation (except the subsidiary legislation not required to be tabled in the Council) was 3 February 2010.

IV. Further business for the Council meeting on 27 January 2010

(a) **Questions**
(*LC Paper No. CB(3) 376/09-10*)

8. The Chairman said that Mr Albert HO and Mr CHEUNG Man-kwong had replaced their oral questions.

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

Inland Revenue (Amendment) (No. 2) Bill 2009

9. The Chairman said that the relevant Bills Committee on the Bill had reported 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.

10. The Chairman further said that it was anticipated that the business on the Agenda of the Council meeting would unlikely be finished on 27 January 2010, and the Council would resume the following day for continuation of the unfinished business.

V. Business for the Council meeting on 3 February 2010

(a) **Questions**
(*LC Paper No. CB(3) 375/09-10*)

11. 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**

(i) **Companies (Amendment) Bill 2010**

(ii) **Business Registration (Amendment) Bill 2010**

(iii) **Buildings (Amendment) Bill 2010**

12. The Chairman said that the Administration had given notice to present the above three Bills to the Council on 3 February 2010. The House Committee would consider these Bills at its meeting on 5 February 2010.

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

Toys and Children's Products Safety (Amendment) Bill 2009

13. The Chairman said that at the last House Committee meeting, Members agreed to rescind the earlier decision to form a Bills Committee to study the Bill and did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) **Government motion**

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

(e) **Members' motions**

(i) **Motion to be moved by Hon TAM Yiu-chung**

15. The Chairman said that the subject of the motion to be moved by Mr TAM Yiu-chung was "Alleviating poverty and helping the disadvantaged with care and concern".

(ii) **Motion to be moved by Hon CHEUNG Kwok-che**

16. The Chairman said that the subject of the motion to be moved by Mr CHEUNG Kwok-che was "Formulating a comprehensive youth policy".

17. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 27 January 2010.

Subsidiary legislation the period for amendment of which would expire on 3 February 2010

18. The Chairman said that a list of subsidiary legislation the period for amendment of which would expire on 3 February 2010 had been tabled at the meeting.

19. The Chairman further said that the deadline for Members to notify the Clerk of their intention to speak on the subsidiary legislation was 5:00 pm on Tuesday, 26 January 2010.

VI. Report of Bills Committees and subcommittees

Report of the Bills Committee on Occupational Deafness (Compensation) (Amendment) Bill 2009

(LC Paper No. CB(2) 786/09-10)

20. Dr PAN Pey-chyou, Chairman of the Bills Committee, reported that the Bills Committee had held six meetings and had completed scrutiny of the Bill, which sought to improve the compensation for persons with occupational deafness and to adjust the rate and the proportion of distribution of the Employees' Compensation Insurance Levy. He referred Members to the Bills Committee's report for details of its deliberations.

21. Dr PAN highlighted the major issues discussed by the Bills Committee. These included whether the ceiling for first-time reimbursement of expenses for hearing assistive devices should be increased; whether a requirement should be imposed for a continuous contract in any specified noisy occupations at any time within the 12 months before application for compensation was made; how the flexibility of transitional arrangements for netting in cases in respect of employees suffering from monaural hearing loss (MHL) could be enhanced; reducing the required aggregate length of employment for making applications for further compensation; how the amount of further compensation for additional hearing loss sustained as a result of continued employment in a noisy occupation should be calculated; and adjustment of the rate and proportions of distribution of the Employees' Compensation Insurance Levy.

22. Dr PAN further reported that in response to members' views, the Administration would move Committee Stage amendments (CSAs) to -

- (a) increase the ceiling for the first-time reimbursement of expenses for hearing assistive devices from \$9,000 to \$12,000;
- (b) reduce the aggregate length of employment required for making applications for further compensation from five to three years; and
- (c) enhance the flexibility of the transitional arrangements for netting in cases involving claimants who had previously made applications to the Occupational Deafness Compensation Board and had confirmed to be suffering from MHL.

Action

23. Dr PAN added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 3 February 2010.

24. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 25 January 2010.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 784/09-10)

25. The Chairman said that there were five Bills Committees, three subcommittees on policy issues under the House Committee and seven subcommittees under Panels in action.

VIII. Concern about the Administration's handling of the motion on "Releasing LIU Xiaobo"

(Letter dated 19 January 2010 from Hon Albert HO Chun-yan to the Chairman of the House Committee (LC Paper No. CB(2)789/09-10(01))

26. At the invitation of the Chairman, Mr Albert HO said that although the motion moved by Mr Fred LI at the Council meeting on 13 January 2010 was concerned mainly with the release of LIU Xiabo and an appeal to the Central Government to recognize Charter 08, the latter part of the motion urged the SAR Government to expeditiously implement democratization of the political structure according to the concepts and principles of Charter 08. It had all along been the convention that the Administration would field officials to attend motion debates on subjects for which it had a role. However, the Administration had not fielded any officials to attend the motion debate concerning LIU Xiabo and had not given any explanation beforehand, but had issued a press release to state its stance on the motion. Mr HO considered that the non-attendance of Government officials at the debate might be on account of the sensitivity of the motion. He did not accept CS's explanations for the matter. He was of the view that the Administration should attend the debate to express its views on the subject, irrespective of whether or not its views were substantial. Mr HO considered that the way the Administration had handled the motion was in breach of the convention and had a negative impact on the operation of LegCo.

27. The Chairman invited Members' views on the relay of Mr Albert HO's views to CS.

28. Mr TAM Yiu-chung said that as CS had already given his explanations for the matter, he did not see the need to follow up any particular issue.

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29. Mr WONG Ting-kwong recalled that the Administration had all along not fielded any officials to attend the motion debates concerning the June 4 incident. As the motion on LIU Xiabo was concerned with Mainland affairs, he did not see any role of the SAR Government. In his view, there was no question of the convention being breached.

30. Mr LEE Cheuk-yan considered that some Members themselves did not respect LegCo. It was also unacceptable for the Administration not to have fielded officials to attend the debate on the motion which concerned the Administration. He considered it necessary to protest against the non-attendance of Government officials at the motion debate.

31. Mr WONG Kwok-kin opined that the subject of the motion should not have been discussed in LegCo as it involved a court case in another jurisdiction. By the same token, the legislature in Macau should not discuss a court case in Hong Kong. While he respected different views on a court case in another jurisdiction, it was not appropriate for the legislature to debate it. He considered it appropriate for the Administration not to have fielded officials to attend the motion debate in order to avoid embarrassment.

32. Mr TAM Yiu-chung clarified that what he had said was that as he considered CS's explanations for the matter acceptable, he did not see the need to follow up the matter. He stressed that Members should not misinterpret other Members' words in an imprudent manner.

33. Mr Albert HO said that some Members might not have read the full content of the motion. The latter part of the motion appealed to the HKSAR Government to democratize Hong Kong's political system with reference to the spirit of Charter 08. Irrespective of whether or not the Administration agreed to the spirit of Charter 08 and the early democratization of Hong Kong's political system, the motion contained a clear urge on the Administration. According to the established convention, the Administration should attend the motion debate to respond on the subject. If the Administration considered that it was not involved in any way in the subject of the motion, it should not have issued a press release on the motion. He further said that motion debates had been held on subjects involving other jurisdictions, such as the motion opposing the taking of military actions by the United States against Iraq and another motion opposing the distortion of history in Japan's textbooks. He stressed that Members should be clear of their responsibilities and should speak out on sensitive issues.

34. Mr WONG Ting-kwong said that while the subject of the motion was "Releasing LIU Xiaobo", its content touched on Charter 08. In his view, the subject and the content of the motion did not match.

35. Mr WONG Sing-chi pointed out that as the motion had been approved by the President for inclusion in the Agenda of the relevant Council meeting, the motion must be related to Hong Kong. He considered it unacceptable for the Administration not to have fielded officials to attend the motion debate the

subject of which was relevant to Hong Kong. This was disrespectful to the President and LegCo. He stressed that the Administration should respect the rulings of the President as a way to show its co-operation with the Legislature. LegCo should send a clear message that it was inappropriate on the part of the Administration not to have fielded officials to attend the motion debate.

36. Dr Margaret NG said that the Administration's handling of the motion was unprecedented. She pointed out that while the Administration had all along not fielded any officials to attend the motion debates concerning the June 4 incident, it had not issued any press releases on the motions. She considered the Administration's handling of the motion disgraceful and more retrogressive than that on the June 4 incident. She further said that while the subject of the motion was "Releasing LIU Xiaobo", Members should read the full content of the motion. As part of the motion concerned the HKSAR Government, the Administration should have fielded officials to attend the motion debate. Should the Administration consider it inappropriate to respond to the former part of the motion concerning the Central Government, it could refrain from doing so and respond only to the latter part of the motion which involved the HKSAR Government. Dr NG added that there were no provisions under the Rules of Procedure (RoP) prohibiting LegCo from discussing court judgments in other jurisdictions. It was only provided in RoP that reference should not be made to a case pending in a court of law in Hong Kong and the conduct of judges, having regard to the principle of separation of powers in HKSAR. She stressed that there was no superior-subordinate relationship between the courts in HKSAR and those on the Mainland. If the subject of the motion should not be discussed in LegCo, the President would not have approved its inclusion in the Agenda of the relevant Council meeting. While appreciating that Members might have different views on the motion, she stressed that the concern raised by Mr Albert HO related to the Administration's handling of the motion. She expressed support for Mr Albert HO for raising the matter for discussion.

37. Mr WONG Kwok-kin did not agree that Members should refrain from discussing court cases in Hong Kong but not those in other jurisdictions. He pointed out that the motion debates on subject matters involving other jurisdictions held in the past, such as the motion opposing the taking of military actions by the United States against Iraq, did not concern court cases. In his view, Members should respect not only HKSAR's judicial system but also that of other jurisdictions. He failed to see any connection between advancing the democratisation of Hong Kong's political system and Charter 08. He further said that there were clear stipulations in the Basic Law on the democratisation of Hong Kong's political system, which had nothing to do with Charter 08. He did not see the need for the Administration to attend the motion debate to respond on the motion, and hence would not support any move by Members to express dissatisfaction towards or protest against the Administration.

Action

38. Ms Emily LAU said that Charter 08 concerned the basic rights of all citizens of the People's Republic of China. Many Hong Kong people had signed the Charter. She hoped that Members would take time to read the Charter, which had been read out during the motion debate. She sought clarification on whether it was Members' wish to relay to CS that the Administration did not have to field any Government officials to attend motion debates related to Hong Kong.

39. The Chairman replied in the negative. She clarified that Members were still discussing the matter. After Members had expressed their views, she would conclude the discussions and seek Members' views on the way forward.

40. Dr Margaret NG said that as she had mentioned earlier, it was provided under RoP that Members should refrain from making reference to cases pending in Hong Kong courts. It was not a question of respect for the court. She said that the Legal Adviser (LA) could explain the scope of the restrictions set out in the relevant provisions of RoP.

41. The Chairman said that the issue raised by Dr Margaret NG could be further discussed in future.

42. Mr CHIM Pui-chung said that in expressing their own views, Members should not criticize the views of other Members, as it was an infringement of other Members' rights and would provoke meaningless arguments.

43. Mr CHAN Kam-lam said that as some Members' views had been relayed to CS and CS had given his explanations, there was no need to follow up the matter. He pointed out that the subject of the motion was "Releasing Liu Xiabo" and had nothing to do with Charter 08. Reference should be made to the Basic Law and not Charter 08 concerning the democratization of Hong Kong's political structure.

44. Mr IP Kwok-him said that he considered the Administration's handling of the motion acceptable. He stressed that while Members were entitled to different views on the matter, they should not impute motives to other Members. It was also inappropriate to relate the matter to an issue of respect or disrespect for the President.

45. Mr Paul TSE sought information on the rules and established convention concerning the attendance of Government officials at motion debates. Referring to RoP 41(2) which provided that reference should not be made to a case pending in a court of law which might prejudice that case, he enquired whether the rule applied to court cases in Hong Kong only or to other jurisdictions as well. He also sought clarification on whether the conduct of judges stated in Rule 41(8) referred to the behaviour of judges in their personal capacity or their judgment on court cases.

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46. At the invitation of the Chairman, LA said that Rules 9 and 10 of RoP, which implemented Article 62(6) of the Basic Law, were relevant to the attendance of public officers at Council and committee meetings. It rested with the Administration as to whether public officers would attend meetings of the Council or committees. Rule 41(2) should be construed to refer to a case pending in a court of law in Hong Kong, and the conduct of judges referred to in Rule 41(8) meant the conduct of judges in the performance of judicial functions.

47. Mr Albert HO said that provided that the wording of a motion was approved by the President, the motion should be debated by Members. He reiterated that had the Administration considered it not involved in any way in the motion on LIU Xiabo, it should not have issued a press release on the motion. The Administration should be reminded to field Government officials to attend debates on motions to express its views instead of expressing its stance stealthily. Mr HO indicated that members belonging to the Democratic Party would write to CS to express their dissatisfaction about the Administration's way of handling the motion.

48. In concluding the discussions, the Chairman said that she would relay the views expressed by Members to CS.

IX. Any other business

49. There being no other business, the meeting ended at 2:59 pm.