

立法會
Legislative Council

LC Paper No. CB(2) 1751/09-10

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 25th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 4 June 2010**

Members present :

Hon Miriam LAU Kin-ye, 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 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 Andrew CHENG Kar-foo
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 WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
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
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP

Hon CHAN Kin-por, JP
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 IP Wai-ming, MH
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Members absent :

Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon IP Kwok-him, GBS, 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 Arthur CHEUNG	Acting Legal Adviser
Mrs Constance LI	Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General (Special Duties)
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mr Thomas WONG	Senior Council Secretary (1)9
Ms Amy YU	Senior Council Secretary (2)3

Ms Anna CHEUNG
Mr Arthur KAN

Senior Legislative Assistant (2)3
Legislative Assistant (2)8

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I. Confirmation of the minutes of the 24th meeting held on 28 May 2010
(LC Paper No. CB(2) 1678/09-10)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that there was nothing special to report.

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)

Food Safety Bill

(LC Paper No. LS 70/09-10)

3. The Chairman said that the Bill sought to establish a registration scheme for food importers and food distributors; require the keeping of records by persons who acquired, captured, imported or supplied food; enable food import controls to be imposed; and re-enact Part VA of the Public Health and Municipal Services Ordinance relating to the powers to make orders for recall of problem food.

4. Mr Tommy CHEUNG considered it necessary to form a Bills Committee to study the Bill.

5. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Mr Fred LI (as advised by Mr James TO), Mr WONG Yung-kan, Mr Tommy CHEUNG, Mr Vincent FANG (as advised by Mr Tommy CHEUNG), Mr WONG Kwok-hing, Dr Joseph LEE and Mr Alan LEONG.

6. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

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- (b) **Legal Service Division report on subsidiary legislation gazetted on 28 May 2010 and tabled in Council on 2 June 2010**
(*LC Paper No. LS 69/09-10*)

7. The Chairman said that two items of subsidiary legislation, including one Commencement Notice, were gazetted on 28 May 2010 and tabled in the Council on 2 June 2010.

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

9. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 30 June 2010.

IV. Further business for the Council meeting on 9 June 2010

- (a) **Tabling of papers**

**Report No. 13/09-10 of the House Committee on Consideration of
Subsidiary Legislation and Other Instruments**

(*LC Paper No. CB(2) 1680/09-10 issued vide LC Paper No. CB(3)
761/09-10 dated 3 June 2010*)

10. The Chairman said that the report covered four items of subsidiary legislation the period for amendment of which would expire on 9 June 2010. No Members had requested to speak on the subsidiary legislation.

11. Members noted the report.

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

Inland Revenue (Amendment) Bill 2010

12. The Chairman said that the relevant Bills Committee 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.

V. Position on Bills Committees and subcommittees

(*LC Paper No. CB(2) 1679/09-10*)

13. The Chairman said that there were 10 Bills Committees, eight subcommittees under the House Committee (i.e. four subcommittees on subsidiary legislation, one subcommittee on constitutional reform proposals, and three subcommittees on policy issues) and nine subcommittees under Panels in action.

VI. Proposed overseas duty visit to Japan and the Republic of Korea by the Panel on Home Affairs

(LC Paper No. CB(2) 1675/09-10)

14. Mr KAM Nai-wai, Deputy Chairman of the Panel, said that the Panel sought the House Committee's permission to conduct an overseas duty visit to Japan and the Republic of Korea, scheduled tentatively from 4 to 11 August 2010, to study the experience relating to the development of cultural software and preservation and promotion of intangible cultural heritage in these two countries.

15. Mr KAM referred Members to the paper for details of the purpose, programme and funding arrangements of the visit, and added that so far eight Panel members had indicated interest in joining the visit. A report would be submitted to the House Committee after the visit. He appealed to Members to support the proposed visit.

16. The Chairman proposed that permission be given for the Panel to undertake the duty visit under rule 22(v) of the House Rules ("HR"). Members agreed.

VII. Proposed overseas duty visit to Japan by the Panel on Health Services

(LC Paper No. CB(2) 1683/09-10)

17. Dr Joseph LEE, Chairman of the Panel, said that the Panel sought the House Committee's permission to conduct an overseas duty visit to Japan in early September 2010 to study its financing models for healthcare services.

18. Dr LEE referred Members to the paper for details of the purpose, programme and funding arrangements of the visit, and added that so far five Members (including one non-Panel Member) had indicated interest in joining the visit. A report would be submitted to the House Committee after the visit. He appealed to Members to support the proposed visit.

19. The Chairman proposed that permission be given for the Panel to undertake the duty visit under rule 22(v) of HR. Members agreed.

VIII. Proposed overseas duty visit to Japan by the Panel on Food Safety and Environmental Hygiene

(LC Paper No. CB(2) 1684/09-10)

20. Mr WONG Yung-kan, Deputy Chairman of the Panel, said that the Panel sought the House Committee's permission to conduct an overseas duty visit in early September 2010 to study columbarium facilities and fisheries industry in Japan.

21. Mr WONG referred Members to the paper for details of the purpose, programme and funding arrangements of the visit, and added that so far six Members (including one non-Panel Member) had indicated interest in joining the visit. A report would be submitted to the House Committee after the visit. He appealed to Members to support the proposed visit.

22. The Chairman said that the Panel and the Panel on Health Services would conduct their proposed visits concurrently. She proposed that permission be given for the Panel to undertake the duty visit under rule 22(v) of HR. Members agreed.

IX. Membership of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

*(Letter dated 24 May 2010 from Hon LEUNG Kwok-hung to the Chairman of the House Committee (LC Paper No. CB(2) 1689/09-10(01))
(LC Paper No. CB(1) 2097/09-10)*

23. At the invitation of the Chairman, Mr LEUNG Kwok-hung explained why he had requested to re-join the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products ("the Subcommittee"). He said that he had resigned from the LegCo membership to join the de facto referendum in the five districts. He was well aware of the serious nature of the work of the Subcommittee and its on-going work. While he was still a member of the Subcommittee, he had raised many questions but had yet be provided with the answers. Many affected investors hoped that he could re-join the Subcommittee. He appealed to Members to support his request so as to enable him to discharge his duties as a LegCo Member.

24. Ir Dr Raymond HO, Chairman of the Subcommittee, said that the Subcommittee was the first subcommittee of the House Committee authorized by resolution of the Council to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The Subcommittee had so far held more than 70 meetings, including some 40 hearings.

25. Ir Dr HO further said that given the resignation of five Members in January 2010 and the return of new Members in the Legislative Council by-election, the Subcommittee had discussed at its meeting on 11 May 2010 whether new Members should be allowed to join the Subcommittee. The Subcommittee noted that there was currently no express provision in the Rules of Procedure, HR or the Practice and Procedure of the Subcommittee that governed whether new Members could be admitted to the Subcommittee at its present stage of work.

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26. Ir Dr HO elaborated that during the course of its deliberations, members noted that as the Subcommittee had a fact-finding role similar to a tribunal in the exercise of the powers under Cap. 382, it should ensure that its practice and procedure complied with the principles of natural justice, in particular the principle of "he who decides must hear". If new Members were to be admitted, the Subcommittee would need to take all reasonable and necessary remedial measures to assist those new Members in keeping abreast of all the evidence that they previously had not heard, and such measures might not be practically feasible.

27. Ir Dr HO added that at the meeting on 11 May 2010, the Subcommittee agreed that since the Subcommittee was set up under the House Committee and in the absence of provisions governing admission of new Members to the Subcommittee, it might be more appropriate for the House Committee to consider requests from Members, if any, for joining the Subcommittee. The Subcommittee noted the written request of Mr LEUNG Kwok-hung dated 24 May 2010 for joining the Subcommittee. Pursuant to its decision on 11 May 2010, the Subcommittee agreed that his request should be put to the House Committee for consideration.

28. The Chairman invited Members' views on:

- (a) whether new Members should be allowed to join subcommittees of the House Committee authorized to exercise the powers under Cap. 382; and
- (b) the request from Mr LEUNG Kwok-hung for joining the Subcommittee.

29. Mr Ronny TONG said that he supported the request of Mr LEUNG Kwok-hung for joining the Subcommittee. He pointed out that before his resignation, Mr LEUNG had participated actively in the work of the Subcommittee and had raised many valid questions on the matters under inquiry. The number of hearings missed by Mr LEUNG after his resignation might not be more than the number of hearings not attended by some members of the Subcommittee. He believed that through studying the relevant papers and transcripts of proceedings, Mr LEUNG could catch up with the evidence he had not heard during the past few months. Mr TONG, however, had great reservations about allowing other new Members to join the Subcommittee. He elaborated that the Subcommittee had been in operation for a long period of time. It would not be fair to the witnesses concerned if any members who had not participated in the many hearings but had only understood the evidence through studying written records were to participate in drafting the report of the Subcommittee and even to lay criticism on some witnesses in its report. Moreover, such an arrangement might be subject to legal challenge. He would, therefore, object to other new Members joining the Subcommittee.

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30. Mr Albert CHAN shared the views of Mr Ronny TONG. In his view, as there was no express provision governing the admission of new Members to the Subcommittee and as Mr LEUNG Kwok-hung's request was to re-join (and not just join) the Subcommittee, his request should be supported. Mr CHAN said that if the Subcommittee held the view that as Mr LEUNG Kwok-hung should not participate in or give views on those parts of the report which he had not participated in the taking of evidence, the Subcommittee should be prudent in applying this principle as some members who had all along been members of the Subcommittee had also not attended certain hearings. He considered that in the absence of strong objection reasons, Mr LEUNG Kwok-hung's request for re-joining the Subcommittee should be approved.

31. Referring to the Chinese version of paragraph 8(a) of the Subcommittee's paper, Dr Margaret NG considered it grossly inappropriate to equate the role of the Subcommittee as "仲裁庭". She said that an arbitrator was appointed under contractual agreement by the parties to a dispute to resolve the dispute. The nature of work of the Subcommittee was totally different. She requested the Subcommittee to either explain the reference or amend it.

32. Acting Legal Adviser ("Atg LA") pointed out that in the English version of the paper, the corresponding reference was "tribunal". There appeared to be a discrepancy between the two versions.

33. Dr Margaret NG said that the word "tribunal" should not have been translated as "仲裁庭" in Chinese.

34. The Chairman said that the matter under discussion was not whether the role of the Subcommittee was similar to an arbitration but whether new Members should be allowed to join subcommittees of the House Committee authorized to exercise the powers under Cap. 382, and whether Mr LEUNG Kwok-hung's request for re-joining the Subcommittee should be approved.

35. Mr Abraham SHEK said that he was a member of the Subcommittee. While Mr LEUNG Kwok-hung was still a member of the Subcommittee, he had spent considerable time in the work of the Subcommittee and had raised many valid questions to which the answers were still outstanding. He would not agree to new Members who were not former members of the Subcommittee to join the Subcommittee. However, Mr LEUNG Kwok-hung was not a new member to the Subcommittee. He further said that as Mr LEUNG had not participated in the taking of certain evidence, on the principle of fairness and subject to the discussion of the Subcommittee, it might not be appropriate for him to participate in writing the relevant parts of the Subcommittee's report. He supported Mr LEUNG Kwok-hung's request for re-joining the Subcommittee and considered that Mr LEUNG would contribute to the work of the Subcommittee.

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36. Mr James TO said that there were no legal hindrances for Mr LEUNG Kwok-hung to re-join the Subcommittee. Verbatim transcripts had been prepared for the proceedings of the hearings, and complete records were kept on the deliberations of the Subcommittee including those at closed meetings. He believed that the Secretariat would provide all the information and documents to Mr LEUNG. Mr TO added that Mr LEUNG had put many questions to witnesses expertly and the witnesses had provided detailed responses. He considered that Mr LEUNG had made great contributions to the work of the Subcommittee, in particular in fact-finding. Mr TO further said that Mr LEUNG had not participated in the work of the Subcommittee for a few months only, and the situation might be similar to a member being absent from the work of the Subcommittee for a certain period due to health reasons. He disagreed with the view that it might not be appropriate for Mr LEUNG to participate in writing the relevant parts of the Subcommittee's report if he had not participated in the taking of the evidence. This matter should be further deliberated by the Subcommittee. Mr TO indicated strong support for Mr LEUNG Kwok-hung to re-join the Subcommittee.

37. Mr Ronny TONG said that paragraph 8(a) of the paper should be amended as the nature of work of the Subcommittee was different from that of a tribunal or arbitration. The work of the Subcommittee was inquisitorial, whereas that of a tribunal adversarial. The task of the Subcommittee was to find facts and not to arbitrate. He did not agree to Mr Abraham SHEK's view that Mr LEUNG Kwok-hung should not give view on the parts of the report if he had not participated in the taking of the evidence. He pointed out that a committee would make a report on the evidence obtained after completing an inquiry, and the report would not necessarily contain criticisms on witnesses. Members who had been absent from certain hearings should be entitled to give views in report writing. He considered that it should be for the Subcommittee to decide how to handle the issue raised by Mr Abraham SHEK when writing its report.

38. Dr Margaret NG suggested that the first sentence of paragraph 8(a) of the paper could be amended along the lines such as "given that the Subcommittee was a fact-finding committee" or "given that the Subcommittee had a fact-finding role in response to complaints lodged by members of the public".

39. The Chairman requested the Secretariat to take note of the comments made by Members on the wording of paragraph 8(a).

40. Mr Paul CHAN agreed with Mr Ronny TONG's view that it was not appropriate to allow new members to join the Subcommittee, having regard to the principles of natural justice. He said that under such a premise, special consideration could be given to Mr LEUNG Kwok-hung's request. In respect of public hearings of the Subcommittee, Mr LEUNG could refer to the relevant verbatim transcripts. As for the closed meetings held by the Subcommittee after Mr LEUNG's resignation, it was his understanding that those meetings

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dealt mainly with matters according to previously agreed principles and no evidence had been taken at those meetings. On the basis of these considerations, he agreed that Mr LEUNG's rejoining of the Subcommittee would not pose serious risks of legal challenge. He supported Mr LEUNG's request.

41. Ir Dr Raymond HO said that there was no express provision on the nature of the investigation being conducted by the Subcommittee. Since the commencement of the Subcommittee's work, major decisions made at its closed meetings had been made public and were available on the website of the Legislative Council. He informed Members that during the period from 27 October 2008 to 28 January 2010 (i.e. before the resignation of Mr LEUNG Kwok-hung), the Subcommittee had held a total of 56 meetings, including 28 public hearings, three open meetings and 25 closed meetings. During the period from 29 January 2010 to the day of the House Committee meeting, the Subcommittee had continued to take evidence from the Chief Executive Officer of the Securities and Futures Commission ("SFC") and a former employee of SFC and conducted hearings to take evidence from top and senior executives of three banks. During the period, the Subcommittee had also dealt with legal issues, such as the sub judice rule, and claims relating to public interest immunity. He would raise no objection should Members agree that Mr LEUNG Kwok-hung could peruse the relevant documents and verbatim transcripts of the public hearings to keep abreast of the work of the Subcommittee during the period.

42. Mr Paul TSE sought information on the number of meetings held by the Subcommittee after Mr LEUNG Kwok-hung's resignation and its percentage in relation to the total number of meetings held so far.

43. Ir Dr Raymond HO reiterated that decisions reached at closed meetings had been made available on the website of the Legislative Council. As regards public hearings, he said that 28 and 13 public hearings were held respectively before and after the resignation of Mr LEUNG Kwok-hung; in other words, about one-third of the public hearings were held after Mr LEUNG's resignation.

44. Mr Paul TSE expressed support for Mr Ronny TONG's view that new members should not be allowed to join the Subcommittee. Under this principle and in so far as the taking of evidence from witnesses was concerned, he sought the views of Atg LA on the impact of Mr LEUNG Kwok-hung's rejoining of the Subcommittee in terms of natural justice and whether it would constitute any grounds for legal challenge. He also sought information on cases where judges sat in a court or tribunal again after having been absent from the proceedings for a certain period.

45. At the invitation of the Chairman, Atg LA said that it would depend on the actual circumstances, such as whether the hearings not attended by Mr LEUNG Kwok-hung formed an integral part of the hearings held by the Subcommittee. It was also important to note that the nature of the

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Subcommittee was different from that of courts and tribunals, and Members did not participate in the work of the Subcommittee on a full-time basis and had to strike a balance between such work and their other public services. As such, there could be no simple comparison. He stressed that the legal adviser to the Subcommittee would give specific advice to members having regard to the actual circumstances.

46. In response to Mr Paul TSE's further enquiry on whether there was any real risk of legal challenge or whether the risk was only minimal or negligible, Atg LA said that there was no question that a risk of legal challenge could in any circumstances be ruled out entirely. He reiterated that it would depend on the actual circumstances. He further said that as pointed out by Members earlier, some members had not attended all the hearings held by the Subcommittee. As there was no precedent case where legal challenge had been brought against a similar inquiry conducted by the Legislative Council on such ground, it was difficult to make any realistic assessment of the degree of risk of legal challenge for the case under consideration. In further response to Mr TSE's enquiry, Atg LA added that whether there were precedent cases in respect of investigative committees of a similar nature in overseas legislatures would be subject to research.

47. Mr Paul TSE was concerned that the Subcommittee might be subject to legal challenge or criticism for violation of the principles of natural justice on account of the re-joining of a member. He was of the view that a prudent approach should be taken if the risk of legal challenge could not be ruled out entirely.

48. Dr Priscilla LEUNG said that she agreed to the views of Mr Abraham SHEK that Mr LEUNG Kwok-hung should be allowed to re-join the Subcommittee although he should not participate in writing the relevant parts of the Subcommittee's report. Noting that Mr LEUNG had not participated in the hearings to take evidence from certain banks, she cautioned that the Subcommittee's work would be subject to judicial review should Mr LEUNG participate in writing the relevant parts of the report. She considered it important to adopt a prudent approach, and Mr LEUNG should not take part in deliberating the relevant parts of the report. She agreed that it was for the Subcommittee to further discuss and decide on such matters.

49. Mr Ronny TONG said that in practice, there would hardly be any court cases similar to the case in question. He stressed that problems might only arise if the relevant parts of the Subcommittee's report lay criticism on certain persons. In his view, such problems could be resolved, for example, by adding footnotes to the relevant paragraphs containing criticisms against certain persons to specify that Mr LEUNG Kwok-hung had not participated in the hearings concerned.

50. The Chairman reiterated that such matters should be dealt with by the Subcommittee with the assistance of its legal adviser.

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51. The Chairman said that she gathered from the discussions so far that Members generally considered that as a matter of principle, it was not appropriate to allow new members to join subcommittees of the House Committee authorized to exercise the powers under Cap. 382.

52. Dr Margaret NG considered that the general principle stated by the Chairman should be qualified as it would depend on the actual circumstances of the case. For instance, while it would be inappropriate to allow a new member to join such a subcommittee if it had already held many meetings, it would not be so if the subcommittee had yet to hold its meetings.

53. The Chairman suggested making it clear that new members should not be allowed to join such a subcommittee if it had already commenced work.

54. Mr James TO said that it would be a long debate if Members had to decide at the meeting whether new Members should or should not be allowed to join such a subcommittee after it had commenced work. He suggested that Members should make a decision only in respect of Mr LEUNG Kwok-hung's request at the meeting, while the issue of the general principle should be decided after more thorough discussion.

55. The Chairman clarified that she had only summarized the views expressed by Members during the discussions on the question of whether new members should be allowed to join such a committee. Given the diverse views expressed by Members, she proposed to refer the matter to the Committee on Rules of Procedure for consideration. Members agreed.

56. In respect of Mr LEUNG Kwok-hung's request for joining the Subcommittee, the Chairman said that no Member had expressed objection to it. While recognizing that there might be a risk of legal challenge, Members agreed that his request should be acceded to given his contributions to the Subcommittee. She added that Members also agreed that it would be for the Subcommittee to decide on the relevant practical arrangements with the assistance of its legal adviser. Members agreed to Mr LEUNG Kwok-hung's request for re-joining the Subcommittee.

X. Any other business

The Chief Executive's Question and Answer (CE Q&A) Session

57. The Chairman informed Members that the last CE Q&A session in the current legislative session would be held on Tuesday, 13 July 2010, from 3:00 pm to 4:30 pm. Members would be consulted on the issues which they would like CE to cover at the House Committee meeting on 25 June 2010.

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58. There being no other business, the meeting ended at 3:08 pm.

Council Business Division 2
Legislative Council Secretariat
10 June 2010