

立法會
Legislative Council

LC Paper No. CB(2) 782/11-12

Ref : CB2/H/5/11

House Committee of the Legislative Council

**Minutes of the 10th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 6 January 2012**

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
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 TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, 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 Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC

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| Ms Miranda HON | Acting Assistant Secretary General 4 |
| Ms Connie FUNG | Senior Assistant Legal Adviser 1 |
| Mr Arthur CHEUNG | Senior Assistant Legal Adviser 2 |
| Mr KAU Kin-wah | Senior Assistant Legal Adviser 3 |
| Mr Andy LAU | Principal Council Secretary (Administration) |
| Mr Stephen LAM | Principal Council Secretary (Complaints) |
| Mrs Sharon TONG | Principal Council Secretary (2) |
| Mr Simon WONG | Chief Public Information Officer |
| Ms Amy YU | Chief Council Secretary (2)6 |
| Mr Matthew LOO | Chief Council Secretary (4)1 |
| Ms Emily PANG | Chief Council Secretary (4)3 |
| Ms Wendy KAN | Assistant Legal Adviser 6 |
| Miss Winnie LO | Assistant Legal Adviser 7 |
| Mr YICK Wing-kin | Assistant Legal Adviser 8 |
| Ms Clara TAM | Assistant Legal Adviser 9 |
| Miss Josephine SO | Senior Council Secretary (2)7 |
| Ms Judy TING | Council Secretary (2)6 |
| Ms Anna CHEUNG | Senior Legislative Assistant (2)3 |
| Mr Arthur KAN | Legislative Assistant (2)8 |

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Use of "request-to-speak" system

The Chairman said that at the last House Committee meeting on 16 December 2011, a Member suggested that given the large size of Conference Room 1, Members should press the "request-to-speak" ("RTS") button, instead of raising their hands, to indicate their intention to speak at House Committee meetings. She drew Members' attention to Rule 75(18) of the Rules of Procedure ("RoP") which provided that subject to RoP, the practice and procedure of the House Committee and its subcommittees should be determined by the House Committee.

2. The Chairman sought Members' view on the use of the RTS system at House Committee meetings. Members agreed. The Chairman said that the arrangement would take immediate effect and the RTS system would be activated at this meeting.

I. Confirmation of the minutes of the 9th meeting held on 16 December 2011

(LC Paper No. CB(2) 707/11-12)

3. The minutes were confirmed.

II. Matters arising

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

4. The Chairman said that she had relayed to CS Members' request for his attendance at a special House Committee meeting to brief Members on the latest progress of the follow-up work to the fire in Fa Yuen Street undertaken by the inter-departmental working group chaired by him. CS had advised that the relevant bureaux and Government departments were actively following up the matter. His original intention was to report to the Legislative Council ("LegCo") when certain progress had been made in the Administration's work in this regard. In view of Members' request, he would discuss with the relevant bureau officials and revert to Members on the proposed date for attending a special House Committee meeting.

5. The Chairman further said that she would follow up the matter with CS.

III. Business arising from previous Council meetings

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

Banking (Amendment) Bill 2011 (*LC Paper No. LS 21/11-12*)

6. The Chairman said that the Bill was to provide for a framework for the implementation of Basel III, which aimed at strengthening global capital and liquidity rules. It sought to empower the Monetary Authority to make rules to prescribe capital requirements and liquidity requirements for authorized institutions and to make related and consequential amendments. The Panel on Financial Affairs had been briefed on the legislative proposals on 9 June 2011. Panel members had enquired about the various impact of implementing Basel III and the consequence of not implementing it.

7. At the invitation of the Chairman, Legal Adviser ("LA") said that given the complex drafting issues involved, the Legal Service Division ("LSD") was still scrutinizing the provisions of the Bill and would provide a further report.

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8. The Chairman suggested that pending LSD's further report, Members would consider the need to form a Bills Committee to study the Bill. Members agreed.

(b) Legal Service Division report on subsidiary legislation gazetted on 16 December 2011 and tabled in Council on 21 December 2011

(LC Paper No. LS 18/11-12)

9. The Chairman said that only one item of subsidiary legislation, i.e. the Country Parks and Special Areas (Amendment) Regulation 2011 (L.N. 176), was gazetted on 16 December 2011 and tabled in the Council on 21 December 2011.

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

11. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 18 January 2012.

IV. Legal Service Division report on subsidiary legislation gazetted on 23 December 2011

(LC Paper No. LS 19/11-12)

12. The Chairman said that only one item of subsidiary legislation, i.e. the Pyramid Schemes Prohibition Ordinance (Commencement) Notice (L.N. 181), was gazetted on 23 December 2011 and would be tabled in the Council on 11 January 2012.

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

14. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 8 February 2012.

V. Legal Service Division report on subsidiary legislation gazetted on 30 December 2011

(LC Paper No. LS 20/11-12)

15. The Chairman said that a total of four items of subsidiary legislation, including two Commencement Notices, were gazetted on 30 December 2011 and would be tabled in the Council on 11 January 2012.

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16. Regarding the Places of Public Entertainment (Exemption) (Amendment) Order 2011 (L.N. 183), the Chairman said that it sought to add a new exemption for places managed by The Legislative Council Commission ("LCC") from the operation of sections 4 and 11 of the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO"), so as to relieve LCC of the need to have a licence for conducting at the LegCo Complex the proposed activities to which members of the public would be admitted. LCC had undertaken to conduct the proposed activities in a prudent manner.

17. Ms Cyd HO considered it necessary to form a subcommittee to study the Amendment Order in detail. She pointed out that under PPEO, "entertainment" included lecture or story-telling. As all members of the public should enjoy freedom of speech including lecture or story-telling, she hoped that the proposed subcommittee, in examining the Amendment Order, could help identify measures to better safeguard freedom of speech.

18. Dr Margaret NG noted with concern from paragraph 4 of the LSD report that LSD held the same view as the Administration that the LegCo Complex would be a place of public entertainment for the purpose of PPEO. She invited LA to explain LSD's view.

19. At the invitation of the Chairman, LA said that LSD arrived at the view on the basis of a legal analysis of the relevant provisions of PPEO. Given that the activities proposed by LCC to be held at the LegCo Complex as set out in paragraph 3 of the LSD report fell within the meaning of "entertainment" as defined in PPEO, and having regard to LCC's plan to admit members of the public to join the proposed activities, there were legal grounds for considering that the LegCo Complex would be a place of public entertainment within the meaning of PPEO.

20. Dr Margaret NG said that when the matter was discussed by LCC, Members noted that the proposed exemption was made with a view to allaying public concerns. However, she considered that from the constitutional point of view, it was doubtful whether LegCo was bound by PPEO. She was supportive of the proposal for forming a subcommittee to examine the Amendment Order in detail.

21. Ms Emily LAU expressed concern about the proposed exemption. She said that many activities fell within the scope of PPEO and there had been calls from Members for amending the Ordinance. She indicated support for forming a subcommittee to study the Amendment Order.

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22. Members agreed that a subcommittee be formed to study the Amendment Order in detail. The following Members agreed to join the subcommittee: Dr Margaret NG, Ms Emily LAU, Ms Cyd HO and Miss Tanya CHAN.

23. Members did not raise any queries on the other three items of subsidiary legislation, i.e. Toys and Children's Products Safety Ordinance (Amendment of Schedules 1 and 2) Notice 2011 (L.N. 184), General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Ordinance 2011 (Commencement) Notice (L.N. 185) and Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2011 (Commencement) Notice (L.N. 186).

24. The Chairman reminded Members that the deadline for amending the four items of subsidiary legislation was 8 February 2012.

VI. Business for the Council meeting of 11 January 2012

(a) Tabling of papers

Report No. 8/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 709/11-12 issued vide LC Paper No. CB(3) 297/11-12 dated 5 January 2012)

25. The Chairman said that the Report covered eight items of subsidiary legislation, including three Orders made under the Inland Revenue Ordinance (i.e. Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Portuguese Republic) Order (L.N. 155), Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Spain) Order (L.N. 156) and Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Czech Republic) Order (L.N. 157)), the period for amendment of which would expire on 11 January 2012. Upon the expiry of the deadline, a Member had indicated intention to speak on these three Orders at the Council meeting. As such, she would move a motion in her capacity as Chairman of the House Committee to take note of the Report in relation to the three Orders at the Council meeting of 11 January 2012.

(b) **Questions**

(LC Paper No. CB(3) 291/11-12)

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

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

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

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

Guardianship of Minors (Amendment) Bill 2011

28. 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.

(e) **Government motion**

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

(f) **Members' motions**

(i) **Motion on "Formulating a comprehensive mental health policy"**

(Wording of the motion issued vide LC Paper No. CB(3) 286/11-12 dated 29 December 2011.)

(ii) **Motion on "Reviewing the population policy"**

(Wording of the motion issued vide LC Paper No. CB(3) 287/11-12 dated 29 December 2011.)

30. The Chairman said that the above motions would be moved by Mr CHEUNG Kwok-che and Mr Vincent FANG respectively and the wording of the motions had been issued to Members. The deadline for giving notice of amendments to the motions had expired on 4 January 2012.

VII. Business for the Council meeting of 18 January 2012

(a) **Questions**

(LC Paper No. CB(3) 290/11-12)

31. 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**

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

(c) **Government motion**

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

(d) **Members' motions**

(i) **Motion on "Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance"**

(Wording of the motion issued vide LC Paper No. CB(3) 295/11-12 dated 4 January 2012.)

34. The Chairman said that at the last House Committee meeting, Members had agreed to the allocation of a debate slot to Mr James TO, in his capacity as Chairman of the Panel on Security, for moving the above motion at the Council meeting of 18 January 2012. The debate slot would not be counted as Mr James TO's own slot.

(ii) **Motion on "Creating a sustainable and open electricity market"**

(Wording of the motion issued vide LC Paper No. CB(3) 296/11-12 dated 5 January 2012.)

35. The Chairman said that the above motion would be moved by Ms Audrey EU and the wording of the motion had been issued to Members.

36. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 11 January 2012.

Report on study of subsidiary legislation

37. The Chairman invited Members to note the list containing one item of subsidiary legislation tabled at the meeting, the scrutiny period of which would expire on 18 January 2012. Members who wished to speak on the subsidiary legislation should indicate their intention by 5:00 pm on Tuesday, 10 January 2012.

VIII. The Chief Executive's Question and Answer Session on 19 January 2012

38. The Chairman said that the Chief Executive ("CE")'s Question and Answer ("Q & A") Session would be held from 3:00 pm to 4:30 pm on 19 January 2012. She asked whether Members had any special issues which they would like CE to cover at the Q & A Session.

39. Members did not raise any particular issue.

IX. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 708/11-12)

40. The Chairman said that there were 16 Bills Committees, eight subcommittees under House Committee (i.e. three subcommittees on subsidiary legislation, two subcommittees on policy issues and three subcommittees on other Council business) and eight subcommittees under Panels in action. One Bills Committee and one subcommittee on policy issues were on the waiting list.

X. Proposal of Hon Fred LI to seek the Legislative Council's authorization to empower the Panel on Economic Development to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance to order the production of information in connection with the tariff increases by the two power companies

(Letter dated 3 January 2012 from Hon Fred LI to the Chairman of the House Committee (LC Paper No. CB(2) 722/11-12(01)))

41. At the invitation of the Chairman, Mr Fred LI said that at the special meeting of the Panel on Economic Development ("EDEV Panel") on 23 December 2011, three motions relating to the 2012 tariff review of the two power companies had been put to vote, and two of which were passed. One of the motions passed was moved by Mr CHAN Kam-lam

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and seconded by Mr Andrew LEUNG which requested, among other things, the Government and the two power companies to submit to the Panel before 1 January 2012 the financial information relating to the capital investment of the two power companies in the next five years as well as their operating expenditures, so as to allay public concerns. Although the two power companies had provided to the Panel supplementary information relating to fuel costs, the documents, classified as confidential, were not comprehensive and had not contained the information sought by the Panel. Given the failure of the Administration to provide the requisite information stated in the non-binding motion, he sought the House Committee's support for his proposal of seeking LegCo's authorization to empower the EDEV Panel to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") to order the production of information in connection with the 2012 tariff increases by the CLP Power Hong Kong Limited ("CLP") and The Hongkong Electric Company Limited ("HEC"). Should his proposal be supported by the House Committee, he proposed that the relevant motion be moved by the Chairman of the House Committee at the earliest possible Council meeting.

42. Mr Fred LI further said that the public was kept in the dark and had no means to find out the cap on basic tariff increase permitted under the respective five-year Development Plans. The two power companies had eventually agreed to reduce the extent of their tariff increases owing to strong public pressure. In his view, making public the current five-year Development Plans of the two power companies would be an effective way to enable the public to consider whether the tariff increases of the two power companies for 2012 or the coming years were justifiable and whether the Administration had properly carried out its gatekeeping duties. In the motion moved by him and Ms Emily LAU at the EDEV Panel meeting, which was negatived, they had also requested for the provision of the minutes of the relevant meetings between the Administration and the two power companies on the 2012 tariff increases. He had not included the provision of such information in his present motion as some of the discussions might not have been recorded in the minutes. He appealed to Members to support his proposal.

43. Mr CHAN Kam-lam said that although his motion passed at the EDEV Panel on 23 December was non-binding, the Administration and the two power companies had responded positively to it. As advised by the Administration in its information provided to the Panel on 30 December 2011, CLP had taken out certain premature investments from its calculation, resulting in reduction in its rate of tariff increase. In addition, members had received supplementary information provided by

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the two power companies over the last few days. In his view, invoking the powers under the P&P Ordinance lightly would raise concern about the impact of LegCo's possible abuse of power on the business environment, as the documents ordered for production might involve sensitive commercial information. Moreover, the Administration had undertaken to make arrangements for members' perusal of documents containing confidential information should members so request. Having regard to these considerations, he considered it not necessary at the present stage to resort to the powers under the P&P Ordinance.

44. The Chairman drew Members' attention to a letter dated 6 January 2012 from the Environment Bureau to the Clerk to the EDEV Panel, which was issued to all Members on the day of the House Committee meeting. The letter had provided further information on the 2012 tariff review with the two power companies.

45. Mr LEE Wing-tat sought clarification from Mr CHAN Kam-lam on whether the Administration had undertaken in writing to make arrangements for members to peruse documents including the Five-Year Development Plans, and whether LegCo Members could cite information which they had perused, for instance, in answering media enquiries. He would object to such arrangements if Members were not allowed to cite the information perused and would be liable for the consequences of disclosing the information. He noted from media reports that even members of the Energy Advisory Committee did not have access to the five-year Development Plans.

46. Mr Ronny TONG also sought clarification on the information referred to by Mr CHAN Kam-lam. Mr TONG said that if Mr CHAN was referring to the documents classified as confidential and tabled at the EDEV Panel meeting on 23 December, he was shocked that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") found the paper acceptable as it did not include any relevant data on the five-year Development Plans of the two power companies. While the Administration had queried the rates of tariff increases of the two power companies, the two power companies claimed that their tariff adjustments were in line with the mechanisms set out in the respective Scheme of Control Agreements ("SCAs"). As Members did not have the relevant information, they could not discharge their duty of monitoring the Government. Even if the said confidential documents did contain the information sought by Members, Members would still not be able to discharge their monitoring duty if they could not disclose the information therein. He considered such arrangements unacceptable. He added that as Members belonging to DAB had expressed support for obtaining the relevant information for public interest, he was surprised

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that they flinched at the last minute. He considered it incumbent upon Members to support Mr Fred LI's proposal to discharge their duties as Members.

47. Ms Audrey EU said that Mr Fred LI's proposal was reasonable and Members belonging to the Civic Party supported it. She criticized that while DAB had earlier on made high profile objection to the tariff increases by the two power companies, it shied away when it came to the invocation of powers under the P&P Ordinance to order the production of the relevant information. She stressed that the two power companies were not ordinary commercial organizations and the matter involved the interest of all members of the public. How certain commercially sensitive information should be provided could be further discussed after the Council had authorized the Panel to exercise the powers under the P&P Ordinance. She recalled that DAB had conducted a signature campaign immediately after the announcement by the two power companies of their tariff increases and had collected some 30 000 signatures. In her view, should Members belonging to DAB not support the proposal, they would let these 30 000 members of the public down. She appealed to Members belonging to DAB to support the proposal.

48. Ms Emily LAU said that the public was furious at the drastic tariff increases by the two power companies. Despite CLP's and HEC's subsequent reductions of the rates of increase, the public including the business sector remained dissatisfied and called on a review to be conducted on the tariff adjustment mechanism. To facilitate public discussion on the matter, it was necessary for the Administration and the two power companies to provide information relating to the basis of the tariff increases. Other than certain commercially sensitive information of which LegCo had procedures for handling, the bulk of the information should be made public. Should Members belonging to the pro-establishment camp vote against the proposal, they should be held accountable to the public. She appealed to Members to support the proposal.

49. Ir Dr Raymond HO said that when the two power companies first announced their proposed rates of tariff increase, Members belonging to The Professionals Forum considered that there was room for downward adjustment, particularly in respect of CLP. After subsequent reductions, the net tariff increases were lower than the inflation rate and many people considered the revised rates acceptable. Ir Dr HO considered it inappropriate for LegCo to invoke the powers under the P&P Ordinance, as the documents ordered for production might contain commercially sensitive information, such as details of the power companies' contracts with fuel suppliers. With only a few months before the expiry of the

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current term of LegCo, Members belonging to The Professionals Forum considered it not necessary to invoke the powers under the P&P Ordinance to inquire into the matter.

50. Mr Jeffrey LAM said that in the current poor economic environment, the drastic tariff increases by the two power companies had aroused wide public concern as it would impose additional burden on the general public and the business sector. In his view, the crux of the matter lay in the SCAs which the Administration had entered into with the two power companies. As a party to the agreements, it was the Administration's responsibility to verify the accuracy of the financial information provided by the two power companies, monitor their capital investments and vet their tariff adjustment proposals. If the tariff increases were considered unreasonable, the Administration should negotiate with the two power companies on behalf of the public. Members belonging to Economic Synergy did not support the proposal as it should be the Administration's responsibility to follow up the matter. He also pointed to the importance of respecting the spirit of contract. If it was specified in the SCAs that certain information was classified as confidential, it would be inappropriate for LegCo to invoke the powers under the P&P Ordinance to order the production of such information. Doing so would adversely affect the business environment of Hong Kong. He noted that more information had been provided to the EDEV Panel for the 2012 tariff adjustments as compared to previous years and the Panel would continue to press the Administration to provide more information on the annual tariff review with the two power companies. He added that the Administration would conduct in 2013 an interim review of the existing SCAs. He considered that the Administration should take the opportunity to amend the provisions of the SCAs to better protect the interest of the public.

51. Mr LEUNG Kwok-hung said that given the Administration's queries on the tariff increases proposed by the two power companies and the contention between the two sides, he considered it necessary for LegCo to obtain the relevant information to find out the truth and discharge its duty of monitoring the Government. Such information would facilitate Members to monitor not only the tariff adjustments, but also the renewal of the SCAs in future. He expressed objection to imposing restrictions on Members from disclosing information provided to them, as it would hamper their role in monitoring the Government. He cautioned that Members objecting to the proposal would be tantamount to relinquishing their duty of monitoring the Government and denying the public of their right to know.

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52. Ms Cyd HO considered it unreasonable for Members to criticize the Administration for not having properly carried out its gatekeeping role on the one hand, and relinquishing their powers under the P&P Ordinance to order for the production of the requisite information on the other. She fully supported Mr Fred LI's proposal as LegCo's discussions and monitoring work should be based on facts. She added that protecting the business environment was not equivalent to protecting the interests of large corporations at the expense of small business vendors. The costs of the tariff increases of businesses would ultimately be borne by the public.

53. Mr WONG Kwok-hing said that when the two power companies first announced their tariff adjustments, Members had expressed strong dissatisfaction with the drastic increases and he had appealed to members of the public to refrain from making timely payments for electricity charge to register their discontent. Notwithstanding the two power companies' subsequent reductions of their tariff increases, the problem had yet to be resolved. He considered that there were merits to Mr Fred LI's proposal, as it would help Members discharge their duties of monitoring the Government's negotiation with the power companies on tariff adjustments and upholding the public's right to know. To address the concern expressed by some Members about commercially sensitive information, he proposed that amendment be made to Mr Fred LI's motion by deleting the phrase "但不限於" after the words "包括" in order to confine the scope of the information to be ordered for production.

54. Mr CHIM Pui-chung considered that the crux of the matter lay in the amount of capital investment of the two power companies. He suggested that the EDEV Panel set out a list of the information sought by Members for provision by the Administration and the two power companies and set a deadline, say in one week's time, for their submission. Should the Administration and the power companies fail to provide the requisite information by the deadline, Members could consider the need to take further action at the next meeting.

55. Mr Albert HO said that Members belonging to the Democratic Party ("DP") considered the amendment proposed by Mr WONG Kwok-hing to Mr Fred LI's motion acceptable. He appealed to Members belonging to the Hong Kong Federation of Trade Unions to support Mr Fred LI's motion if amended as proposed. He pointed out that owing to the lack of information, Members could not ascertain whether the Administration had failed to fulfil its duties in monitoring the two power companies. The passage of the proposed motion would put pressure on the Administration to provide the requisite information. He

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clarified that Mr Fred LI's proposal was to invoke the powers under the P&P Ordinance to order the production of information, and not to conduct an inquiry. Regarding the concern about the confidentiality of commercially sensitive information, he considered that given the overriding public interest involved, LegCo should have the right to access confidential information. Should the two power companies consider the disclosure of any information detrimental to their interests, they could request for its excision.

56. Mr Paul TSE opined that the amendment proposed by Mr WONG Kwok-hing to Mr Fred LI's motion made no substantive difference to the scope of the information to be ordered for production. He shared the view that overriding public interest was at stake and considered it necessary to obtain more information to facilitate Members' consideration of the tariff increases and whether the two power companies should continue to be granted exclusive rights. While he supported in principle Mr Fred LI's proposal, he considered the scope of the requisite information too wide and might be regarded as oppressive. He sought advice from LA on whether it was procedurally in order for LegCo to request the Administration to first provide a list of all the available information to facilitate Members to identify the crucial information required to be submitted by the Administration, and whether LegCo could approve a stay of the authorization resolution, should it be passed, to allow time for the EDEV Panel to agree with the Administration on the provision of information, failing which the Panel would resort to the powers conferred by the P&P Ordinance to obtain the requisite information. He believed that these proposals could help strike a balance between the public's right to know and the need to avoid putting oppressive demands on the Administration. Noting that Ms Audrey EU would move a motion relating to the tariff increases at the Council meeting of 18 January, he considered it useful if the requisite information could be provided to Members before the motion debate. He enquired about the lead time required for the Panel to invoke the powers under the P&P Ordinance.

57. At the invitation of the Chairman, LA said that Mr Fred LI's proposed motion was to seek the Council's authorization to empower the EDEV Panel to exercise the powers under the P&P Ordinance to order the production of all papers, books, records or documents in relation to the tariff adjustments by the two power companies. Should the motion be approved by the Council, it would be for the Panel to determine the relevant practice and procedure in accordance with RoP. According to past experience, the committee concerned could make arrangements with the relevant parties relating to the submission of the requisite information.

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58. The Chairman said that should the House Committee support Mr Fred LI's proposal, the motion as set out in his letter would be moved at a Council meeting, subject to any amendment to the motion agreed by Members at the House Committee meeting. The motion would be voted in the Council, and Members could move amendments to the motion in the Council. She added that should the House Committee not support Mr Fred LI's proposal, individual Members could still move a motion in this regard in the Council.

59. Referring to the criticisms made by some Members on DAB, Mr TAM Yiu-chung said that Members belonging to DAB had all along considered that LegCo should exercise its powers under the P&P Ordinance in a prudent manner. This notwithstanding, Members belonging to DAB had supported the invocation of such powers by LegCo on many occasions. In respect of the matter under discussion, they considered it not necessary to invoke the powers under the P&P Ordinance at this stage. As pointed out by Mr CHAN Kam-lam, the Administration and the two power companies had been requested to provide relevant information for Members' consideration. Should the Administration and the two power companies refuse to provide certain information, Members could further consider the need to invoke the powers under the P&P Ordinance. That said, DAB had publicly indicated that it would continue to monitor the matter and urge the Administration to review the tariff adjustment mechanism of the two power companies. Mr TAM added that DAB had mobilized resources in districts and had collected signatures from many members of the public objecting to the tariff increases. He stressed that CLP's reduction of its net tariff increase to 4.9% was the result of the concerted efforts of all Members and the public.

60. Mr LEUNG Yiu-chung believed that Members would not raise lightly proposals for exercising the powers under the P&P Ordinance. They did so only where significant public interests were involved. He considered it unfair to say that the proposal was raised imprudently. He then elaborated on his reasons for supporting Mr Fred LI's proposal. Mr LEUNG said that he had attended the relevant meeting of the EDEV Panel, at which the two power companies had only provided scanty information in their powerpoint presentation materials on the tariff increases impacting on all members of the public. While the Administration had pointed out that certain capital expenditures had been prematurely included in the calculation of the tariff adjustment, members were not given the details. Neither had the two power companies explained their claims that there was no room for reduction in the tariff adjustments. Yet, they had agreed subsequently to reduce the tariff

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increases. Under these circumstances, he considered it necessary to invoke the powers under the P&P Ordinance to obtain the information to ensure rational public discussion on the matter and fairness to all parties concerned.

61. Mr CHAN Kam-lam said that over the past few weeks, Members had been united in fighting against the two power companies on the matter. Some Members, however, had pinpointed at DAB at this House Committee meeting, which he considered unfair. He pointed out that DAB had mobilized the public to object to the tariff increases and the reduction in the tariff increases by the two power companies was the outcome of the joint endeavour of all. He expressed disapproval of some Members' derogation of DAB's efforts in this regard. He reiterated that Members could put forward their requests for information to the Administration. He did not subscribe to the view that Members should exercise the powers under the P&P Ordinance to obtain the information while confidential information could be excised. He considered that this would not serve the purpose.

62. Mr LEE Wing-tat said that DP and the public had all along been consistent in the matter; it was DAB which had deserted midway. Referring to the Environment Bureau's letter dated 6 January 2012 stating that the Administration had informed members of all the essential features of the five-year Development Plans of the two power companies, he pointed out that he had perused the essential features referred to by the Administration, and such information was not useful. He reiterated that even members of the Energy Advisory Committee did not have access to the five-year Development Plans.

63. Mr Fred LI referred to the motion moved by Mr CHAN Kam-lam at the EDEV Panel meeting on 23 December 2011, wherein the Administration was requested to submit to the Panel before 1 January 2012 information relating to the capital investment of the two power companies in the next five years as well as their operating expenditures. Mr LI said that although the Administration had failed to provide the requisite information, DAB seemed to find it acceptable. To follow up seriously on the matter, he had therefore proposed to invoke the powers under the P&P Ordinance to obtain the requisite information. He clarified that his proposal was to seek the Council's authorization to exercise the powers under the P&P Ordinance to order the Administration to produce the relevant information, and not to inquire into the matter. Referring to Mr Jeffrey LAM's comment in a radio programme that the Administration failed to act as the gatekeeper in the matter, Mr LI opined that Members would not be discharging their duties if they did not seek the information from the Administration.

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64. Mr IP Kwok-him expressed strong objection to the criticisms made on DAB, which he considered unfair. He stressed that Members belonging to DAB had indicated clearly that the Administration should provide the information and they would continue to follow up the matter.

65. Mr Fred LI said that he agreed to the amendment to his motion proposed by Mr WONG Kwok-hing, i.e. to delete the phrase "但不限於" after the words "包括".

66. As there were divided views among Members, the Chairman put to vote the proposal of Mr Fred LI for moving the following motion in the Council:

"鑒於兩間電力公司調整2012年電費背後的數據及資料未有全面公布，而2008年審批的5年發展計劃的詳情亦未有公開，本會根據《立法會(權力及特權)條例》(第382章)第9(2)條授權經濟發展事務委員會行使該條例第9(1)條所授予的權力，以命令香港特別行政區政府環境局局長出示所有分別與中華電力有限公司和香港電燈有限公司調整2012年電費相關的文據、簿冊、紀錄或文件，包括：

- (一) 兩間電力公司調整2012年電費的詳細資料；及
- (二) 兩間電力公司5年發展計劃的詳細資料。"

Translation

"That, since the data and information behind the 2012 tariff adjustments by the two power companies have not been fully disclosed, and the details of their five-year Development Plans approved in 2008 have also not been publicized, the Panel on Economic Development be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of the Ordinance to order the Secretary for the Environment of the Government of the Hong Kong Special Administrative Region to produce all papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and

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The Hongkong Electric Company Limited respectively, including :

- (a) detailed information on the 2012 tariff adjustments by the two power companies; and
- (b) detailed information on the five-year Development Plans of the two power companies."

Ms Audrey EU requested to claim a division.

The following Members voted in favour of the proposal:

Mr Albert HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Hon WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man.

(29 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Mr IP Kwok-him and Mrs Regina IP.

(16 Members)

The following Member abstained:

Mr CHIM Pui-chung

(1 Member)

67. The Chairman declared that 29 Members voted for and 16 Members voted against the proposal and one Member abstained. Mr Fred LI's proposal was supported.

68. Members agreed that the motion would be moved by the Chairman of the House Committee at the Council meeting of 8 February 2012.

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69. As it was already 3:48 pm, the Chairman said that the House Committee meeting had to be suspended and would be resumed after the Finance Committee meeting to deal with the unfinished business.

(The meeting was suspended at 3:48 pm and resumed at 5:54 pm.)

XI. Proposals for asking urgent oral questions under Rule 24(4) of the Rules of Procedure at the Council meeting of 11 January 2012 relating to the detection of legionella pneumophila in the new Central Government Offices and the Legislative Council Complex and related matter

(a) Dr Hon Joseph LEE's proposed oral question

(Letter dated 3 January 2012 from Dr Hon Joseph LEE to the Chairman of the House Committee (LC Paper No. CB(2) 722/11-12(02)))

(b) Dr Hon Priscilla LEUNG's proposed oral question

(Letter dated 3 January 2012 from Dr Hon Priscilla LEUNG to the Chairman of the House Committee (LC Paper No. CB(2) 722/11-12(03)))

(c) Hon WONG Kwok-hing's proposal to invite the Administration to attend a House Committee meeting to report on the latest situation and handling of the matter

(Letter dated 4 January 2012 from Hon WONG Kwok-hing to the Chairman of the House Committee (LC Paper No. CB(2) 748/11-12(01)))

70. Before inviting Members to express views on the proposals of Dr Joseph LEE and Dr Priscilla LEUNG respectively for asking urgent oral questions under RoP 24(4) at the Council meeting of 11 January 2012 relating to the detection of Legionella bacteria in the new Central Government Offices ("CGO") and the LegCo Complex and the proposal of Mr WONG Kwok-hing for inviting the Administration to attend a House Committee meeting to report on the latest situation and handling of the matter, the Chairman informed Members that LCC would meet on 10 January 2012. The President had agreed on the day of the House Committee meeting that there would be an open session from 8:30 am to 11:30 am, at which the Administration would brief Members on the matter and all Members could attend and raise questions ("the briefing"). The public officials who had confirmed attendance included Deputy Director of Administration 1, Assistant Director of Administration 1 and Principal Executive Officer (Administration) of the Administration Wing;

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Director of Architectural Services, Project Director 1, Chief Project Manager 103 and Chief Building Services Engineer 3 of the Architectural Services Department; and Controller of Centre for Health Protection, Department of Health.

71. The Chairman further said that Dr Priscilla LEUNG had left the House Committee meeting due to a prior engagement. In respect of her proposal for raising an urgent oral question, Dr LEUNG had indicated that she would defer to Members' decision on the matter.

72. Dr Joseph LEE said that the nature of LCC meetings was different from that of Council meetings. Although all Members could attend the briefing, its focus was still on internal issues. His proposed urgent question was not about technical issues relating to the infrastructure of CGO and the LegCo Complex. His focus was on the contingency measures to be adopted by the Administration in the event of a large-scale outbreak of the Legionnaires' Disease ("LD") in these buildings. As his question was related to matters of public interest, he considered the Council meeting an appropriate forum for raising it.

73. Mr WONG Kwok-hing expressed regret that relevant Government officials had not been invited to the House Committee meeting to report on the matter to Members as requested in his letter dated 4 January to the Chairman. He criticized the Administration for the slow response and its half-hearted manner in handling the matter. He pointed out that notwithstanding the setting up of a special help desk at the Accident and Emergency Department of Ruttonjee Hospital for the persons working in the LegCo Complex, the assistance rendered was not entirely satisfactory. Noting that all Members could attend the briefing, he sought clarification on whether the press could be there to observe. He requested the Chairman to relay urgently his two requests to the Administration. First, where persons working in the LegCo Complex, including contractors' staff, suspected that they had been infected with LD and sought medical consultation at the special help desk at the Accident and Emergency Department of Ruttonjee hospital or any public hospital, arrangement should be made for them to undergo the necessary tests including the urine test. Second, the Administration should promptly make known to the public the laboratory results of the tests of the water samples taken from CGO and the LegCo Complex. He urged the Administration to face the matter squarely and take prompt actions to prevent the spread of the disease.

74. The Chairman said that the press could observe the briefing. Referring to Mr WONG Kwok-hing's letter dated 4 January, she clarified that Mr WONG had not stated in his letter the request for inviting public

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officers to attend the House Committee meeting on 6 January. His requests, as stated in paragraphs 1 and 3 of his letter, were to include his proposal in the agenda of the House Committee meeting and to follow up the matter as soon as possible. In response to Mr WONG's request, she had agreed to include his proposal in the agenda of the House Committee meeting. Should Members, after discussing Mr WONG's proposal, consider it necessary to arrange a special House Committee meeting to discuss the matter in addition to the briefing, she would make the necessary arrangements.

75. Prof Patrick LAU shared his view on the suspected source of the Legionella bacteria detected in CGO and the LegCo Complex. He said that LD was named after an outbreak occurring in a Legion Convention in Philadelphia of the United States of America in 1976. Men were more susceptible than women and the LD bacteria grew well in places where hot water systems were installed. According to his discussion with the architect and Government officials concerned, the suspected source of the LD bacteria was the insulated water pipes which transported hot water to the water taps and showers in the offices of the Directors of bureaux in CGO. If the hot water, at the temperature of between 30°C to 50 °C, in the water pipes was seldom used, it would provide an optimal growth environment for LD bacteria. He further said that the water taps in Members' toilets should not be a cause for concern as they were not connected to any hot water system. The Members' Activity Room should also not be a cause for concern as the shower-rooms there were used frequently by some Members. While appreciating the concerns expressed by some Members' assistants who worked in the LegCo Complex, he considered that Members should not be over-worried and it was important to find out the source of LD bacteria detected in CGO and the LegCo Complex to avoid panic.

76. The Chairman reminded Members that the focus of discussion at the meeting should be the proposals for asking urgent oral questions and inviting the Administration to attend a House Committee meeting to discuss the matter.

77. Ms Emily LAU said that she suggested to the LegCo Secretariat on 4 January that the Administration should be invited to attend the House Committee meeting. She was informed by the Secretariat that an LCC meeting would be held to discuss the matter the following Tuesday. She had requested the President on the day of the House Committee meeting to have an open session of the LCC meeting so that all Members could attend and the press could observe. She considered it incumbent upon the Administration to provide details of the situation and answer Members' questions as soon as possible to allay the concern of persons

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working in CGO and the LegCo Complex. Hence, she supported the proposals for asking urgent oral questions at the Council meeting of 11 January and inviting officials from all relevant bureaux and departments to attend a House Committee meeting to discuss the matter. Ms LAU acknowledged the efforts made by the LegCo Secretariat in updating Members' assistants on the latest situation and addressing their needs and concerns. She requested the Secretariat to continue to keep close contact with Members' assistants on the matter. She referred to the incident where two Government doctors attending a briefing for reporters on LD insisted that the briefing should not be videotaped, and stressed the importance for the Administration to handle the matter expeditiously and in a transparent manner. She considered that a series of meetings to discuss the matter might be necessary and such meetings should also be transparent.

78. Dr PAN Pey-chyou said that there was wide public concern on the detection of the Legionella bacteria in CGO and the LegCo Complex. He provided additional information on the Legionella bacteria. He pointed out that such bacteria existed in air, garden soils and grew in aqueous environment with mineral substances. They fed on single-celled algae and grew well at the temperature range of 20°C to 30°C. Susceptible groups included persons with weak immunity and the elderly. Legionella bacteria were responsible for about 5% to 10% of pneumonia cases found in the community. LD was not transmitted by person-to-person contact and could be treated with antibiotics. As the Administration was slow in releasing information, the public, in particular persons working in CGO and the LegCo Complex, were worried about the situation. He considered it important for the Administration to act proactively to address public concerns and provide updated information to the public daily or even more frequently. To facilitate the public to better understand the matter, he supported the proposals for asking urgent oral questions at the Council meeting of 11 January.

79. Mr IP Kwok-him acknowledged the prompt actions taken by the LegCo Secretariat to handle the matter, such as the disinfection work for the water supply system in the LegCo Complex. He said that information on the latest situation had been disseminated in an open manner. He did not consider the detection of Legionella bacteria in the LegCo Complex too scary. His assistants were also not particularly worried about it. He noted diverse views in the community on the priority arrangement provided to persons working in the LegCo Complex for receiving medical treatment in connection with suspected infection of LD. Members belonging to DAB did not have strong views on the proposals for asking urgent oral questions at the Council meeting of

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11 January, and it would be for the President to decide whether to approve the proposals. He welcomed the President's decision to have the briefing open to all Members. Whether it was necessary to invite the Administration to attend a House Committee meeting could be considered after the briefing. At the present stage, he did not consider that there was such a need.

80. Ir Dr Raymond HO considered it inappropriate to attribute the detection of Legionella bacteria to only one or two causes when the investigation was still underway. He pointed out that the hot water system installed in CGO was also found in many new buildings. In his view, the Administration should set up expeditiously an inter-departmental working group to handle the matter, which should include representatives from the Department of Health, Architectural Services Department, Electrical and Mechanical Services Department, Water Supplies Department and the Administration Wing. Representatives from these Government departments should also be present at the briefing. He considered it unfair to put the blame on the Director of Architectural Services as it was not a requirement under the existing legislation to conduct tests on Legionella bacteria in new buildings. The Subcommittee on Building Safety and Related issues should follow up the matter and review the need to amend the Buildings Ordinance (Cap. 123) to require the conduct of tests on Legionella bacteria in all new buildings. He also acknowledged the efforts of the LegCo Secretariat in taking prompt measures to handle the matter.

81. Mr WONG Ting-kwong said that it was important to adopt a scientific approach in handling the matter. He thanked the LegCo Secretariat for taking prompt actions to handle the matter. He regretted that the matter had been blown up out of proportion, and hoped that the upcoming briefing and the urgent oral questions raised in the Council would help clear up the matter.

82. Mr WONG Kwok-hing said that initially the special medical arrangement at public hospitals did not cover contractors' staff working in the LegCo Complex. After he had complained about the matter, these staff were included. He requested the LegCo Secretariat to convey to the Administration his requests as follows:

- (a) where persons working in the LegCo Complex suspected that they had been infected with LD and sought medical consultation at the special help desk at the Accident and Emergency Department of Ruttonjee Hospital or any public hospitals of the Hospital Authority, arrangement should be made for them to undergo the necessary tests including the urine test;

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- (b) once the laboratory results of any water samples taken from the various sites in CGO and the LegCo Complex were available, they should be made known to the public immediately; and
- (c) apart from the public officials who had confirmed attendance at the briefing, officials responsible for the inspection and handover of CGO and the LegCo Complex should also be there.

83. Mr WONG Kwok-hing further said he did not object to the proposals of the two Members for asking urgent oral questions at the Council meeting of 11 January. As for his proposal for inviting the Administration to attend a House Committee meeting to discuss the matter, he suggested that Members could consider such a need after the briefing.

84. Members agreed to the proposals of Dr Joseph LEE and Dr Priscilla LEUNG for asking urgent oral questions at the Council meeting of 11 January.

85. The Chairman said that if necessary, Mr WONG Kwok-hing's proposal could be further discussed at the next House Committee meeting. She added that the LegCo Secretariat should convey Members' requests in paragraph 82 above to the Administration as early as practicable.

(Post-meeting note : A letter conveying Members' requests was faxed to the Director of Administration on 6 January 2012.)

XII. Any other business

86. There being no other business, the meeting ended at 6:35 pm.