

立法會
Legislative Council

LC Paper No. CB(2) 1723/11-12

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House Committee of the Legislative Council

**Minutes of the Special Meeting
held in Conference Room 1 of the Legislative Council Complex
at 3:00 pm on Tuesday, 21 February 2012**

Members present:

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, 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 Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, 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 CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon CHEUNG Kwok-che

Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon LEUNG Kwok-hung
Hon Tanya CHAN
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man

Members absent:

Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Hak-kan
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC

Clerk in attendance :

Miss Odelia LEUNG Clerk to the House Committee

Staff in attendance :

Ms Pauline NG Secretary General

Mr Jimmy MA, JP	Legal Adviser
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General 4
Mr Stephen LAM	Principal Council Secretary (Complaints)
Mr Kelvin LI	Acting Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
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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- I. Request from Hon LEE Wing-tat for asking an urgent oral question under Rule 24(4) of the Rules of Procedure at the Council meeting of 22 February 2012 relating to a prospective Chief Executive candidate suspected to be involved in unauthorized building works**
[Appendix I to LC Paper No. CB(2) 1137/11-12 - Notice given by Hon LEE Wing-tat for asking an urgent oral question at the Council meeting of 22 February 2012]

The Chairman explained the reason for convening the special House Committee meeting. She said that Mr LEE Wing-tat had given notice to seek the President's permission to ask an urgent oral question under Rule 24(4) of the Rules of Procedure ("RoP") at the Council meeting of 22 February 2012 relating to a prospective Chief Executive ("CE") candidate suspected to be involved in unauthorized building works ("UBWs"). Since the President had announced that he would consider seriously standing in the CE Election, to avoid any possible perceived conflict of interest, he wished to seek the views of the House Committee on Mr LEE's request. Hence, the special House Committee meeting was held to consider Mr LEE's request.

2. The Chairman further said that Mr Albert CHAN had also separately given notice to seek the President's permission for asking an urgent oral question at the same Council meeting relating to concerns about the attendance of CE at a spring gathering in Macao. Rule 10 of the House Rules ("HR") provided that to assist the President in considering requests for asking urgent questions without the required notice, the Member concerned should, where practicable, first seek the agreement of the House Committee before submitting an urgent question to the Clerk to the Legislative Council ("LegCo"). Given the holding of the special House Committee meeting to consider Mr LEE Wing-tat's request, Members were invited to also consider Mr Albert CHAN's request for asking an urgent oral question under agenda item II below.

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3. Mr LEE Wing-tat declared that he had nominated Mr Albert HO as a candidate in the Fourth Term CE Election. He said that his urgent oral question concerned a prospective CE candidate suspected to be involved in UBWs. He raised the question for the purpose of obtaining information on details of the investigation conducted in relation to the premises concerned and prosecutions contemplated against the persons involved, if any. Given the wide public concern, he considered it necessary for LegCo to follow up on the matter. He had proposed to ask an urgent oral question on the matter at the Council meeting of 22 February 2012 because he was not allocated a question slot at the following Council meeting to be held on 29 February, and no oral questions would be scheduled for the Council meetings in March 2012. He stressed that he was not targeting any individual candidate running in the CE Election. He had also raised an urgent oral question on allegations of conflict of interests involving another candidate at the Council meeting of 15 February 2012. As he had nominated Mr Albert HO as a CE candidate, he sought advice on whether he could vote on the proposal if it was put to vote after discussion.

4. At the invitation of the Chairman, Secretary General ("SG") said that all LegCo Members were Election Committee members and had the same right to make nomination and vote in the Fourth Term CE Election. As such, whether a Member had nominated any CE candidate would not affect his right to vote on the proposal under discussion.

5. Mr Albert CHAN queried whether it was appropriate for LegCo to discuss issues relating to a CE candidate when the CE Election was underway and the proposed question was raised by a Member who was assisting in another CE candidate's election campaign. He was concerned about LegCo being used as a platform for election activities and sought advice from the Legal Adviser ("LA") on whether the asking of the proposed urgent oral question would constitute an election activity in law.

6. At the invitation of the Chairman, LA said that according to RoP 22(1), any Member might address a question on the work of the Government with a view to either seeking information on such matter or asking for official action with regard to it. The President would consider requests for asking urgent questions in accordance with the relevant provisions in RoP and HR. As regards whether the proposed oral question would constitute an election activity, LA said that electoral advertising and conduct to induce another person to vote or not to vote for a particular candidate in an election were regulated under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554). Section 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap 382)

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provided that no civil or criminal proceedings should be instituted against any Member for words spoken before, or written in a report to, the Council or a committee. It was for individual Members to judge how to exercise their powers in a proper manner.

7. Mr Albert CHAN was concerned that the asking of the proposed oral question might have the effect of inducing another person to support or not to support a particular candidate in the forthcoming CE Election. He sought advice on whether Members in considering the proposal under discussion should take this into account.

8. At the invitation of the Chairman, LA said that the relevant offences under the Elections (Corrupt and Illegal Conduct) Ordinance involved different elements. The issue raised by Mr Albert CHAN was beyond the matters governed by the provisions in RoP.

9. Referring to the second part of Mr LEE Wing-tat's question seeking information on whether the authorities would consider instituting prosecutions against the persons and contractors concerned, Dr Margaret NG sought information on whether similar questions had been raised in the past. Pointing out that prosecution was institution of legal proceedings, she was concerned whether it was appropriate and in compliance with RoP to raise a question on the possibility of instituting prosecution at the present stage.

10. At the invitation of the Chairman, SG said that RoP did not prohibit a Member from asking questions about the possibility of instituting prosecution against certain persons. It was for the Administration to decide on the information to be provided in its reply, having regard to whether such information would prejudice the case.

11. Regarding Dr Margaret NG's enquiry on precedent cases, Assistant Secretary General 3 ("ASG3") said that Members had raised questions in the past on the progress of the Administration's investigation into a case and its decision on whether or not to prosecute. It was for the Administration to decide on the information to be provided in its replies.

12. At the invitation of the Chairman, LA supplemented that RoP 25 laid down the rules to which a question should conform. For instance, a question should not seek information about a matter which was of its nature secret; it should not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law; and it should not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition.

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13. Mr IP Kwok-him shared Mr Albert CHAN's concern on whether LegCo was an appropriate platform for discussing issues relating to certain CE candidates and whether the raising of the proposed question would constitute an election activity. He opined that as the President had permitted the asking of an urgent oral question concerning allegations of conflicts of interest involving another CE candidate at the Council meeting of 15 February 2012, it would be difficult to justify a decision not to accede to the request under discussion.

14. Mr KAM Nai-wai said that Members should not consider Mr LEE Wing-tat's request from the perspective of whether the proposed question would induce people to support or not to support a particular CE candidate. Should such a perspective be adopted, there should not be any media reports on any CE candidates. In his view, Members should consider whether significant public interest was involved and whether the matter was of wide public concern. He pointed out that following wide media coverage about UBWs last year, the Administration had announced that, as a matter of established practice, priority would be accorded to the inspection and investigation of cases involving senior government officials and public figures and causing considerable public concern. He supported Mr LEE's request as the proposed question related to a matter of great public concern and no oral questions would be scheduled for the Council meetings to be held in March 2012.

15. Mr TAM Yiu-chung said that asking questions at a Council meeting was different from media reports. As a Member belonging to the Democratic Party ("DP") was a candidate in the forthcoming CE Election, the raising of urgent oral questions on other CE candidates by Members belonging to DP at two consecutive Council meetings might give people an impression of there being a hidden agenda. Given that the investigation into the UBWs concerned was underway, he queried the urgency of asking the proposed question at the present stage.

16. Mr WONG Yuk-man criticized Members belonging to DP for participating in the small-circle CE Election and using LegCo as a platform to discredit other CE candidates. While agreeing that the proposed urgent question and the one raised at the last Council meeting concerning two CE candidates involved significant public interest, he considered it highly inappropriate for Members belonging to DP to raise these urgent questions as DP had nominated a CE candidate.

17. Mr LEUNG Kwok-hung considered it illogical for Mr LEE Wing-tat to ask about measures to be taken by the Administration to ensure fairness, impartiality and openness of the forthcoming CE Election, given its nature as a small-circle election. In his view, contrary to the

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claim of DP, its participation in the CE Election had exposed not the absurdity of the scandal-filled small-circle CE Election but its own absurdity. He appealed to Members belonging to DP to withdraw expeditiously their participation from the small-circle CE Election.

18. Dr Priscilla LEUNG said that all Members had their preference for the CE candidates. She stressed the importance for the House Committee to consider requests for asking urgent oral questions concerning different CE candidates in a fair and consistent manner.

19. The Chairman clarified that Mr LEE Wing-tat's request for asking an urgent oral question on allegations of conflict of interests involving a CE candidate at the Council meeting of 15 February 2012 was submitted directly to the President and had not been considered by the House Committee.

20. Mrs Sophie LEUNG expressed concurrence with Mr Albert CHAN's view that it was not appropriate for LegCo to discuss matters relating to the CE candidates. She cautioned that Members should avoid making the same mistake again.

21. At the suggestion of Mr Paul TSE, the Chairman invited Members to declare their interests, if any, on Mr LEE Wing-tat's proposal before it was put to vote.

22. The following Members declared that they had nominated Mr Henry TANG in the Fourth Term CE Election: Ms Miriam LAU, Ir Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr CHIM Pui-chung.

23. The following Members declared that they had nominated Mr Albert HO in the Fourth Term CE Election: Mr Fred LI, Dr Margaret NG, Mr James TO, Ms Emily LAU, Mr LEE Wing-tat, Mr KAM Nai-wai, Mr CHEUNG Kwok-che and Miss Tanya CHAN.

24. The Chairman then put to vote Mr LEE Wing-tat's proposal for asking an urgent oral question under RoP 24(4) at the Council meeting of 22 February 2012 relating to a prospective CE candidate suspected to be involved in UBWs. Mr LEE Wing-tat requested a division.

The following Members voted in favour of the proposal:

Mr Fred LI, Mr James TO, Ms Emily LAU, Mr LEE Wing-tat, Mr KAM Nai-wai and Mr CHEUNG Kwok-che.

(6 Members)

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The following Members voted against the proposal:

Ir Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung and Prof Patrick LAU.
(7 Members)

The following Members abstained from voting:

Dr Margaret NG, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Mr IP Wai-ming, Mr IP Kwok-him, Mr LEUNG Kwok-hung and Miss Tanya CHAN.
(10 Members)

25. The Chairman declared that six Members voted for and seven Members voted against the proposal and 10 Members abstained from voting. Mr LEE Wing-tat's proposal was not supported.

II. Request from Hon Albert CHAN for asking an urgent oral question under Rule 24(4) of the Rules of Procedure at the Council meeting of 22 February 2012 relating to concerns about the attendance of the Chief Executive at a spring gathering in Macao

[Appendix I to LC Paper No. CB(2) 1148/11-12 - Letter dated 21 February 2012 from Hon Albert CHAN to the Chairman of the House Committee]

26. The Chairman invited Members to note the revised version of Mr Albert CHAN's proposed urgent oral question tabled at the meeting.

(Post-meeting note: The revised version of Mr Albert CHAN's proposed urgent oral question was issued to Members vide LC Paper No. CB(2)1164/11-12 on 22 February 2012.)

27. Mr Albert CHAN said that the attendance of CE at a spring gathering in Macao and his trips on private yachts involved important public interest, had undermined the Government's reputation and governance, and had significant impact on the civil service. The incidents widely reported by the media over the last two days had called into question the appropriateness of CE's attendance at the gathering with guests including persons of dubious background and his alleged acceptance of advantages from tycoons. He stressed that there was urgency for CE to clarify the allegations made against him to address public concern, hence his proposal for raising the urgent oral question.

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28. Mr Paul TSE said that he did not see any urgency in Mr Albert CHAN's proposed question. He noted that according to RoP 25(1)(j) and RoP 41(7), a question should not ask about the character or conduct of CE except in his official or public capacity. As it appeared that the question concerned the conduct of CE not in the performance of his official duties, he sought clarification on whether the question was in contravention with RoP 25(1)(j).

29. At the invitation of the Chairman, LA said that Mr Albert CHAN's question covered a number of issues, including the management of the civil service. In deciding whether to grant Mr CHAN's request, the President would consider whether the question complied with the relevant provisions in RoP, including RoP25(1)(j) referred to by Mr Paul TSE. The House Committee should consider whether the proposed oral question related to a matter of urgent public importance, and provide the President with its recommendation accordingly.

30. At the invitation of the Chairman, SG said that the Secretariat would study the contents of the questions submitted by individual Members to ensure their compliance with the rules set out in RoP 25. She added that it was not clear from the proposed question as to whether CE attended the gathering in his official or private capacity.

31. ASG3 supplemented that the Secretariat received the revised version of Mr Albert CHAN's question in the morning of the day of the House Committee meeting and had yet to study it in detail. As a general principle, if a question asked only about a public officer's private activities, it would be ruled out of order and could not be asked. However, there were cases where a question asked about policy issues arising from the private conduct of a public officer which had breached the relevant rules of the civil service. Whether a question was in order would depend on its exact wording.

32. Mr IP Kwok-him said that it was for the President to decide whether Mr Albert CHAN's question conformed to RoP. Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong did not consider that there was urgency in raising the question and therefore did not support Mr CHAN's request.

33. Dr Margaret NG said that Mr Albert CHAN's question focused on the propriety of CE's attendance at the spring gathering hosted by a casino in Macao and its impact on public confidence in the Administration. In her view, the question could be asked provided that its final wording was in order. However, while she agreed that the question related to a matter of public importance, she did not see any urgency which warranted the asking of it as an urgent question.

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34. Mr Abraham SHEK considered that Mr Albert CHAN's question was not of an urgent character, and the allegation had not specified who were the persons with dubious background attending the spring gathering.

35. Mr LEUNG Kwok-hung said that the crux of the problem was the non-disclosure of full details of the matter by the Chief Executive's Office ("CE's Office"). In his view, political figures should be mindful of the need to avoid actual or perceived conflict of interests, and CE was duty-bound to clarify the matter proactively and expeditiously, so as to allay the public concerns.

36. Mr CHIM Pui-chung said that as it was legal to operate casinos in Macao, he could not see why CE could not attend a spring gathering hosted by a casino. He noted that some of the guests attending the gathering were described in the media reports as members of loan-sharking syndicates and triad societies. In his view, such generalized descriptions which were not backed up by evidence were misleading and might be untrue. While he agreed to the need for CE to respond to the allegations, he did not consider that there was urgency in the matter.

37. The Chairman said that the descriptions on the guests attending the spring gathering had been deleted in the revised version of Mr Albert CHAN's proposed question tabled at the meeting.

38. Mr Paul TSE noted from media reports confirmation by the CE's Office that CE went to Macao on vacation from 18 to 19 February 2012. In his view, given that CE was then not in his official capacity, Mr Albert CHAN's question was clearly out of order and as such, it would not be necessary for Members to consider whether there was urgency in raising it.

39. At the invitation of the Chairman, LA said that the Member concerned might amend the wording of his question before submitting it to the President for consideration. In considering whether a question was in order, the general approach that the Secretariat adopted for assisting the President was not to proactively seek information that was not in the domain of the Council in order to verify the contents of a question. Nevertheless, the Administration and the parties concerned could provide relevant information for the President's consideration in making his ruling.

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40. Mr Paul TSE said that Members should consider Mr Albert CHAN's proposal based on the information available at the moment and the current wording of the question, rather than the assumption that amendments could be made by Mr CHAN to the proposed question to satisfy the requirements of RoP.

41. At the invitation of the Chairman, LA said a Member who raised a proposal for asking an urgent question for the House Committee's consideration might make amendments to his question in the light of the views of the House Committee. Should Mr Albert CHAN's proposal be put to vote after discussion, Members should make their decision based on the version of the question laid before them.

42. Mr Paul TSE said that while he disagreed with the acts of CE as reported by the media, he considered it important that requests for asking urgent questions should be dealt with prudently in accordance with the relevant procedures and provisions in RoP. He was deeply concerned about opening up the floodgate for raising urgent questions.

43. The Chairman said that the House Committee and the President would perform their gate-keeping roles to prevent abuse of the system. Apart from the views and recommendation of the House Committee, the President would also take into account the relevant provisions in RoP in deciding whether to give permission for raising an urgent question.

44. Mr Jeffrey LAM sought information on whether senior public officers were required to report their vacations and visits outside Hong Kong while on leave. He also asked about the definition of "making contact with persons of dubious background" referred to in Mr Albert CHAN's question.

45. Mr Albert CHAN clarified that he was not referring to CE when using the phrase "making contact with persons of dubious background".

46. At the invitation of the Chairman, SG said that it was the normal practice for the Secretariat to examine the contents of questions based on their wording for the purpose of ascertaining their compliance with the relevant provisions in RoP. The Secretariat would not take the initiative to verify the truthfulness of the information stated in the questions. As the questions would be sent to the Administration for reply, should the Administration consider that a question was not in compliance with RoP, it could provide relevant information to substantiate its claim for the President's consideration in making his ruling.

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47. The Chairman reminded Members to focus their discussion on whether the question proposed by Mr Albert CHAN was of an urgent character which warranted the asking of an urgent question.

48. Mr Jeffrey LAM said that he did not consider it appropriate to raise the proposed urgent oral question as no urgency was involved.

49. Mr Albert CHAN said that he had not planned to raise his proposal for discussion at the House Committee meeting, and his original intention was to submit it to the President directly for his ruling. He reiterated the reasons for raising the urgent question. He stressed that CE's attendance at the spring gathering in Macao had dealt a serious blow to the reputation and credibility of the Government and involved the important question of how civil servants should comply with the relevant code of conduct. In addition, the allegations concerning CE's acceptance of entertainment and his trips on luxurious private yachts might involve corruption and conflict of interests, but the Administration had failed to answer the questions raised by the media. In his view, his proposed question was of an urgent character and related to a matter of public importance.

50. Mr WONG Yuk-man said that the raising of the proposed urgent oral question would provide an opportunity for CE to explain the matter to the public to restore the tarnished image of the Government.

51. As there were divided views among Members, the Chairman put to vote Mr Albert CHAN's proposal for asking an urgent oral question under Rule 24(4) of RoP at the Council meeting of 22 February 2012 relating to concerns about the attendance of CE at a spring gathering in Macao. Mr Albert CHAN requested a division.

The following Members voted in favour of the proposal:

Ms Emily LAU, Mr CHEUNG Kwok-che, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man.
(5 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Dr Priscilla LEUNG, Mr IP Kwok-him, Mr Paul TSE, Dr Samson TAM and Miss Tanya CHAN.
(18 Members)

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The following Members abstained from voting:

Mr WONG Kwok-hing and Mr WONG Kwok-kin.
(2 Members)

52. The Chairman declared that five Members voted for and 18 Members voted against the proposal and two Members abstained from voting. Mr Albert CHAN's proposal was not supported.

53. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
18 April 2012